

RECENT ENGLISH PRACTICE CASES.

17, are identical, excepting that the former requires the plaintiff to file an amended copy of the writ of summons, which our order does not do.]

SALT V. COOPER.

Imp. Jud. A. 1873, sec. 24., subs. 7, O. 42.—Ont. Jud. A., sec. 16, subs. 8, O. 38.—Equitable execution—Appointment of receiver after final judgment—"Cause or matter pending."

[Ch. D., C. of A., Dec. 21, 1880,—50 L. J. R., 529.

In this case in the court below, the M. R. held that after final judgment in an action a receiver may be appointed (although the writ contains no claim for a receiver) without the issue of any fresh writ, so long as the judgment remains unsatisfied, the action being in such a case "a cause or matter pending" within the meaning of the Jud. Act, 1873, sec. 24, sub-sec. 7, and that Imp. O. 42. (Ont. O. 38), does not at all affect the question.

Now on appeal to the Court of Appeal the above decision of the M. R. was affirmed.

[NOTE.—*Imp. J. 7., A. 1873, sec. 24, subs. and Ont. J. A. sec. 16, subs. 8 are identical. The case of Salt v. Cooper, before the M. R. is cited by Taylor & Ewart at p. 335 of their work on the Jud. Act. The case involved a further point arising from the prior appointment of a receiver by the Court of Bankruptcy, and the judgments are mainly concerned with this. The Lord Justices of Appeal, however, allow the subsequent equitable execution would have been good, but for this.]*

WATSON V. CAVE.

Appeal—Withdrawal of withdrawal.

An appellant wrote a letter on Jan. 26, 1881, proposing to withdraw his appeal, and asked the respondent's consent to such withdrawal, which was given. Two days afterwards he gave notice of his intention to proceed with the appeal, on the ground that he had before been under a misapprehension as to a material matter of fact, which misapprehension had now been removed.

Held, that the withdrawal could not be rescinded, and that the appeal could not be heard.

[Ch. D., C. of A., Feb. 19, —
50 L. J. R. 561; 19 W. R. 763.

The facts sufficiently appear from the above head-note.

On the opening of the appeal, on the preliminary objection being taken that the defendant, having withdrawn his appeal, could not proceed with it,—

Counsel for appellant contended that as the appeal had not been struck out they could proceed. When an order was made in Court in the presence of the parties by consent, it was open for either party to withdraw that consent at any time before the order was actually drawn up: *Rogers v. Horn*, 26 W. R. 432.

JAMES, L. J., was of opinion that it would be *pessimi exempti* if they were to allow such a withdrawal of the appeal as that which was contained in the letter of Jan. 26, 1881, to be rescinded. In this case it was true that within two days the appellant wrote, withdrawing his withdrawal. But it might have been after two years, and it was impossible to say what might not have been done by the respondents in the meantime on the faith of such withdrawal. The letter of the 26th of January could not be treated as a mere proposal to withdraw, but was a formal notice by the appellant of his intention to withdraw his appeal, and to avoid further costs he asked the respondents to consent to his withdrawal. The respondents gave their consent, and if the appellant wished afterwards to withdraw his withdrawal and return to his former position, his proper course would have been to have applied for leave to give fresh notice of appeal. If the notice of withdrawal had been given under any mistake of fact, the court might, upon a due consideration of all the facts, have acceded to such an application, but at present it knew nothing of the facts of the case.

LUSH, L. J., was of the same opinion. The proposal made on the one side, and accepted on the other constituted a contract which was binding on the parties, and did not require, in order that it should be perfected, that the appeal should be actually struck out of the list. If the case had come before the Court after what had taken place, their Lordships would themselves have ordered the appeal to be struck out. The proper course for the appellant would have been to have applied for leave to serve his notice of appeal, although such notice was out of time, and if he could have shown that there had been a mistake of a serious nature, in consequence of which he sought to be allowed to