

RECENT ENGLISH PRACTICE CASES,

of pleading. As to *Imp. O. 19, r. 3*, he observed:—"It is to my mind evident, then, that there is no intention to confine the claim made by the counter-claimant to damages, or to an action of the same nature as the original action; and therefore, when it is said that the defendant may set up against the claims of the plaintiff a claim of his own, it does not mean necessarily that that is a claim *ejusdem generis*, because it says expressly 'whether such set off or counter-claim sound in damages or not.'"

He then referred to *Imp. O. 20, (Ont. O. 16)* whereby provision is made for enabling the defence to be brought down to a date later than the commencement of the action, and that, in his opinion, opposed as it was to that of the *M. R.*, the rule introduces this liberty with regard to defence only, because the liberty already existed with regard to counter-claim by the statute. He then continued as follows:—

"I cannot help observing that the construction of *M. R.* appears to me to be open to this very serious objection, that it requires the defendant, who has separate cause of action beginning before and after the date of the original writ, to separate those causes of action; the one which goes down to the date of the original writ he may ventilate by means of cross-claim; in respect of the other he must issue an independent writ. Now, I think that the general spirit of the *Jud. Acts* is especially to prevent multiplicity of procedure, and to enable the parties to settle, as far as may be, by one hearing and one judgment, all questions in controversy between them."

He then referred, in confirmation of this view, to *Stooke v. Taylor*, *supra*; *Winterfield v. Bradnum*, *supra*; and the utterances of the judges therein; and observed that in the light of these authorities, the decision of the *M. R.* in *Vavasour v. Krupp*, *supra*, which is very inconvenient, appears, to say the least, of doubtful correctness, finally expressing a hope that the matter would be carried to the Court of Appeal.

[NOTE.—*Imp. O. 19, r. 3*, is identical with *Ont. O. 15, r. 3, No. 127.*]

MORRIS V. RICHARDS.

Imp. O. 57, r. 3—Ont. O. 52, r. 4, (No. 457).

Action on promissory note barred, where limit of time under Statute of Limitations expired on a Sunday, and the writ was not issued till the following Monday, since above order was not intended to extend the time fixed by said Statute.

[March 11, Q. B. D.—45 L. T. N. S. 210.]

The above point came up on a question reserved at the Assizes by A. Wills, Q. C., Commissioner.

In delivering judgment Mr. Commissioner Wills at first determined that the Statute of Limitation for bringing the action in question expired on June 13th, 1880, which was a Sunday. He then continued as follows:—"It is said that under *O. 57, r. 3 (Ont. O. No. 457)* the cause of action did nevertheless arise within six years of the commencement of the action. I am of opinion that this rule has no such application in this case. The "time for doing any act" in this rule refers to times limited by the practice of the Court for taking proceedings, and the effect of the rule is, that in the cases to which it is applicable, a proceeding which but for that enactment would not, if taken on Monday, be duly taken according to the practice of the Court, whether established by definite enactment or otherwise, shall nevertheless be held to be duly taken. It certainly was never intended that the provision should affect the Statute of Limitations. The writ in this case was 'duly issued' on the Monday without the protection of Order 57, r. 3, and there is nothing in the enactment to alter the actual date of the commencement of the action."

[NOTE.—*The Imp. and Ont. orders are identical.*]

DAVIES V. WILLIAMS.

Imp. J. Act 1873, sec. 90—Ont. J. Act, sec. 78.

Where an action has been transferred from a County Court into the High Court, the proceedings must thenceforth be regulated by the practice of the High Court. Hence, in an action for ejectment so transferred, discovery cannot be obtained before the delivery of a statement of claim.

[Dec. 17, 1879—45 L. T. N. S. 469.]

The point in question is indicated by the head-note, and came up on an application for