COMMON PLEAS.

Monday, August 27, 1860.

Present: DRAPER, C. J.; RICHARDS, J.; HAGARTY, J.

Trent Road Company v. *Marshall.* — Defendant's rule discharged. Plaintiff's rule made absolute to increase the verdict as to £36 11s. 0d.

Trustees of School Section No. 6 of York v. *Hunter.*—Rule *nisi* to enter a non suit made absolute.

Wallace v. *Adamson.*—Rule *nisi* to set aside verdict found for defendant, and to enter same for plaintiff, discharged.

Weaver v. *Bull.*—Demurrer. Judgment for plaintiff. *Held*, that School Trustees, prior to the passing of the Act of Last Session, had no power to determine as to the question of personal liability of School Trustees, and had no power to award costs of the arbitration to be paid by the Teacher or the Trustees.—*Quære*—As to the effect of the Act of Last Session on the right of determining the question of personal liability?

Edinburgh Life Assurance Company v. *Clarke.*—Rule absolute for a new trial without costs.

QUEEN'S BENCH.

Tuesday, August 28. 1860.

Present: ROBINSON, C. J.; McLEAN, J.; BURNS, J.

Van Buren v. *Bull*—Trover. *Held*, that arbitrators before the recent School Act, had no power to award costs. 2—Or to award that the Trustees should pay the amount awarded within 30 days, or be personally liable. 3.—That the authority of the arbitrators was at an end when the award was made. 4—That it was not any part of the arbitrators duty to decide whether the Trsutees had or had not exercised their corporate powers.

Burns v. *Boyd.*—Judgment for defendant on demurrer.

Whitehouse v. *Roots.*—*Held*, plea bad—replication good.

Wallace v. *Hewett.*—Rule to enter verdict for plaintiff discharged.

Gaston v. *Watson.*—Action for negligent fire. Rule *nisi* to enter nonsuit pursuant to leave reserved, made absolute.

PRIVILEGES OF ADVOCATES.

(*Concluded from page* 174.)

INJUNCTION.

We next proceed to consider the proposal to give to the Common Law Courts power to protect by injunction property, whether real or personal, the title to which is in contest in an action at law, from alienation, waste, or injury, till the right shall have been determined.

We must, in all humility, confess that we are at a loss to conceive that any substanttal objection can be offered to a proposal so obviously reasonable.

It is plain that such a power should exist somewhere. A man in possession of land the title to which is contested, *à fertiori* a man in possession without a title, ought not to be permitted, pending proceedings to eject him, to commit waste to the damage of one who claims with a better title. A man who is in wrongful possession of a chattel, for the loss of which money may be a very inadequate compensation to the rightful owner, ought not to be left at liberty to make away with it while an action for its recovery is pending.

At present, protection in this respect can only be obtained by recourse to a court of equity, while the recovery of the thing itself can only be effected in a court of law: two suits with twofold expense, where one would suffice!

And no question here can be raised as to the competency of the tribunal.

It would be strange indeed, if it could be doubted that the Court which in an action of ejectment or detinue has to to determine the right to the corpus of the estate or chattel, was also capable of deciding whether the defendant should be restrained from committing waste or making away with the thing in dispute until the right was determined.

We now pass on to consider the instances in which it is proposed to confer new jurisdiction on courts of law irrespective of any pending action.

And, first, as to the proposed power of restraining by injunction the impending violation of any legal right. We must here beg it may be borne in mind that it is not proposed in this branch of the subject to confer on courts of law powers in respect of any rights which are not strictly of a legal character. Throughout the contemplated amendments it has never been proposed, where title to property was complicated by equitable rights to withdraw the decision from the courts of equity. This being kept in view, we must confess ourselves altogether at a loss to conceive why, when legal rights alone are involved, a court of law, whose special and proper province it is to determine such rights, should be without power to protect them from violation. And it must be observed that this anomaly in our judicial system is rendered the more striking and discreditable to our jurisprudence by the partial jurisdiction already extended to the legal tribunals by the act of 1854.

As the law now stands, if a single act of wrong has been committed, a court of law, on an action being brought, has power to grant an injunction to prevent a repetition of the wrong. If a nuisance were about to be created which would seriously lessen the value of a man's property, as, for instance, if a local board were about wrongfully to bring the main sewer of the district close to a man's premises, no protection could be afforded by a court of law, But if the thing has once been done, and the whole expense incurred, not only may damages be recovered for the present injury, but the nuisance may be abated for all future time. If out of a thousand trees growing on an estate a single tree be wrongfully cut down, an injunction may be obtained from a court of law to prevent the cutting down of the remaining 999. But if, with the certainty of impending injury, the party whose rights are about to be invaded should come to a court of law for protection before the axe has been laid to the root of the first tree, he would be told that while, if he had waited till one tree was cut, the Court would have protected him as to all the rest, the Legislature has not thought fit to entrust the Court with powers for the protection of the first, but has committed that to the exclusive keeping of a court of equity. We cannot but think that this state of things (arising as it does out of the partial manner in which the recommendations of our second report as to injunction were carried into effect) is an anomaly in our judicial system which almost borders on the ludicrous, and is a serious reproach to our legislation.

We must be forgiven for saying that we cannot comprehend the alarm which the proposal to remove it has occasioned. The jurisdiction is one which, reference being had to the subject matter, falls properly within the province of the common law courts. It is one which these courts already possesses and exercise in an ulterior stage. The competency of the Courts or of their procedure cannot come into controversy. The question has been concluded by the Legislature itself in conferring powers which presuppose all the qualifications both in the judges and their procedure which are necessarily for the exercise of those now proposed to be given. We cannot but think that the objection to this extension of jurisdiction has arisen principally from its having been overlooked that it is only proposed to confer it where damages can now be recovered in an action, and where, therefor, strict legal rights are involved, and that the powers proposed to be conferred by the present Bill are neither more nor less, in substance and degree, than those created by the Act of 1854: the difference consisting simply in this, that they may be exercised before the mischief instead of after it has commenced.