

Q. B. Div.]

RECENT DECISIONS—NOTES OF CASES.

[Q. B. Div.]

POWERS UNDER TWO ACTS OF PARLIAMENT.

Of the cases in 6 Prob. Div. pp. 125-165, we may refer to *Prehn v. Bailey*, p. 127, for the purpose of noting the principle advanced it, that where a public body has powers under two Acts, it must be taken to have proceeded under that which gave it most advantages.

PRIVATE INTERNATIONAL LAW.

In the case of the *Leon*, p. 148, an action in *personam* was brought by the owners of a British vessel against the owners of a Spanish vessel to recover damages caused to the British vessel by collision with the Spanish vessel on the high seas, and the defendants pleaded that they were Spanish subjects, and that if there was any negligence on the part of those in charge of the Spanish vessel, it was negligence for which the master and crew alone, and not the defendants, were liable according to the law of Spain. Sir Robert Philimore held, on demurrer, that this plea was bad, for that the law governing the liability of the defendants was the general maritime law as administered in England.

We must hold over our review of the Chancery Division cases in the Law Reports for December, as also the January numbers of the Law Reports, and the Law Journal reports just received.

NOTES OF CASES.

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QUEEN'S BENCH DIVISION.

Wilson, C. J.]

[Jan. 24.]

UNION FIRE INSURANCE COMPANY V. LYMAN.

Statement of defence—Contents of paragraph in Rule 128—Calls on stock—Allotment—Vesting of shares.

Though each paragraph of statement of defence should under Rule 128, as nearly as may be, contain a separate allegation, it need not contain a separate defence.

Claim: Calls upon shares for which the defendant's testator had subscribed, and upon which he had paid ten per cent. at the time of subscription. Defence: By a by-law of the plaintiff company no subscriber of stocks should be a shareholder until the same had been allotted to him by order of the board; the testator subscribed for fifty shares, or any portion thereof which might be allotted to him, but no allotment was ever made.

Held, on demurrer, bad; for the by-law did not extend to a case in which a person on subscribing paid the necessary deposit, in whom the shares would vest under 39 Vic. ch. 93, sec. 2, (O.) the plaintiff company's Act of incorporation.

A. C. Galt, for defendant.

MacLennan, Q. C., contra.

Wilson, C. J.]

[Jan. 10.]

RE MISENER V. TOWNSHIP OF WAINFLEET.

Municipal Act—Drainage by-law—Withdrawal of petitions—Alteration in work petitioned for.

A petition was presented under section 529 of the Municipal Act for the draining of certain lands, by construction a drain in a certain direction and deepening a stream. The petition was signed by eighteen persons, being a majority of those shewn by the assessment roll to be benefitted by the work, viz., thirty-three. A resolution of the council was passed under which surveys and estimates were made. Subsequently five of the petitioners withdrew, some by petitioning for a simple clearing of the bed of the stream, and some by informing the council that they would dig their own drains. By a subsequent petition three more desired to do the work themselves. By another petition seven interested persons desired to add their names to those who were in favour of the work. The names of six of the original petitioners remaining were not in the schedule to the by-law of those to be benefitted. This left the number of petitioners at eleven. The council having procured a second estimate, showing that by diverting the direction of the drain the work could be done at less expense, passed a by-law reciting that a majority of those to be benefitted had petitioned, and providing for the construction of the work according to the altered plans. No debentures had been issued, nor contracts let, when a motion was made to quash the by-law.