

RELATIVE IMPORTANCE OF CASE LAW.

execution of the instrument. The Court of Common Pleas uniformly held that until registry the instrument was void as against creditors, and that registration would not make it valid unless it took place within the five days. See *Feehan v. Bank of Toronto*, 10 C. P., 32; *Shaw v. Gault*, *Ib.* 240; *Haight v. McInnes*, 11 C. P., 518. On the other hand, the Court of Queen's Bench, as uniformly held that the filing related back to the execution, and if the instrument was filed within the five days, the assignee or mortgagee was entitled as against a writ against goods placed in the sheriff's hands after the execution of the instrument, but before its registration. See *Feehan v. Bank of Toronto*, 19 U.C.Q.B., 474; *Balkwell v. Beddeme*, 16 U.C.Q.B., 206. This conflict was so pronounced and irreconcilable that the Legislature had at last to interfere, and then declared that the law as expounded by the Queen's Bench ought to prevail, by enacting in 26 Vic., c. 46, s. 1, that every such instrument shall operate and take effect upon, from and after the day and time of the execution thereof.

Again: in cases where the liberty of the subject is directly involved (*e. g.*, applications for *habeas corpus*) each court is accustomed, and, indeed, considers itself bound to exercise its jurisdiction according to its own view of the law. See *Re Timson*, L. R. 5 Exch. 261. This was also exemplified in one of the *causes célèbres* of Canada, *Re John Anderson*, 11 C. P. 9, and 20 U.C.Q.B. 124.

An interlocutory order in a suit in equity is usually deemed of less authority than the final judgment given at the hearing of the cause. As remarked by *Richards*, C. B., in *Drew v. Harman*, 5 Price 322, "An injunction is but an interlocutory order made for the sake of security, and very often the court ultimately decides exactly the other way." So in *Ball v. Storie*, 1 Sim. & Stu. 214,

it was said by the Court, "An interlocutory order of the Court of Chancery in Ireland can only be regarded here as an authority, and not as binding upon the Court; although a final judgment of that Court, in a case in which it has concurrent jurisdiction, might be entitled to different consideration." But there are motions, interlocutory in form, which in truth go to the whole merits of the case. When, for instance, on an injunction motion, the rights of the parties depend not upon a conflict of evidence but upon a question squarely arising upon the pleadings, as touching the construction of a document, or the like,—in these cases the decision, though interlocutory in form, is in effect of as much weight as a judgment given at the hearing. This distinction was brought out by Lord Mansfield in *Revell v. Henry*, 2 B. & B., 286. His language is as follows: "But it has been said that this was an opinion on a motion for an injunction, and not a deliberate judgment, on a hearing on pleadings and proofs. * * * Where all the facts appear upon the bill and answer, and there is nothing in dispute between the parties but the law of the court, it is very common, both in this country and in England, to decide the question upon motion. There are many instances in the reports in Lord Redesdale's time and in the contemporary reports. It is a great saving of expense to the parties, and the judgment of the Court is equally entitled to weight and authority." The present Master of the Rolls in England (Sir George Jessel) has expressed his intention of always following this practice: and so, where a question is fairly raised on demurrer, he does not hesitate to decide it, though many judges before his time were in the habit of reserving it for a hearing.

Where the question before the Court is one not involving principle, but is a mere matter of practice, the Courts