

RECENT ENGLISH PRACTICE CASES.

cided by two named persons; and least of all do I hold that the Court is bound to hold its hand on that ground in a case where, as here, there has been part performance of what I consider to be one of the most important stipulations in this agreement."

[NOTE: *Imp. J. A. sec. 24, subs. 5. and Ont. J. A., sec. 16, subs. 6, are identical.*]

REG. V. HOLL AND OTHERS.

Parliamentary elections—Mandamus.

[June 1, 2 Q. B. D.—45 L. T. 69.]

Where commissioners appointed, under *Imp. 15-16 Vict. c. 57*, to inquire into corrupt practices alleged to have taken place at elections, refuse to give a certificate of indemnity, under *Imp. 26-27 Vict. c. 29. sec. 7.*, to a witness examined by them in connection with such corrupt practices on the ground of his answers being unsatisfactory, the court will not grant a writ of mandamus to them to do that which *prima facie* they rightly and properly refused to do.

[NOTE:—*R. S. O. c. 11., sec 53, is an enactment very similar to Imp. 26-27 Vict., c. 29., sec. 7.*]

RE X. Y. Z.

R. S. O. c. 40., sec. 58—Lunacy—Order for examination by visitors—Place where enquiry by jury held.

[April 13, and May 7. C. of A.—45 L. T. 97.]

In this case a petition in lunacy had been presented and answered, and the solicitors of the petitioner desired an examination of the alleged lunatic, X. Y. Z., by two medical men, to be held at the place where he resided in the country. The solicitors of X. Y. Z., however, declined this, but offered to allow the examination in London in the presence of a shorthand writer, and of another medical man on behalf of X. Y. Z.

The court ordered that two of the Lord Chancellor's visitors should examine X. Y. Z. and report, and that all persons should be restrained from interfering with their visits.

After the visitors had reported, the Court made the usual order for an inquiry before a jury; and that the enquiry should be held

at or as near as convenient to the place where X. Y. Z. resided.

On May 7th counsel for X. Y. Z. applied to have this altered, and the inquiry directed to be held in London. It appeared there was a great difference of opinion between the petitioner and his wife, who was the sister of X. Y. Z., as to the propriety of the proceedings in lunacy, and that they all lived in the same house in the country.

Counsel against the motion cited *ex parte Smith*, 1 Sw. 6; *ex parte Southcot*, 2 Ves. sen 402; *ex parte Baker*, 19 Ves. 340.

All three judges agreed that the inquiry should take place in London.

BAGGALLY, L. J.—I think the inquiry ought to take place in London. I do not accept the reason that the expense of holding it in the country will be greater. I put it upon the ground of the very strong family feeling existing in the matter, which, one may very fairly expect, extends to the neighbourhood in which the alleged lunatic lives.

JAMES, L. J.—A jury *de corpore comitatus* is the worst possible jury in a case where there is local feeling.

[NOTE:—*It seems also from some expressions of Cotton, L. J., that in the case of threatened interference by third parties, the Court will, on notice to them, order them not to interfere with the examination of the alleged lunatic by medical men selected by the petitioner and approved by the Court.*]

RE KNAPMAN; KNAPMAN V. WREFORD.

Costs—Probate action and administration action against executrix—Set off of costs by executrix—Incumbrances and assignments.

[C. of A., May 19—45 L. T. 102]

Here a testator left £2,000 to be equally divided among certain legatees, and the residuary estate to his executrix absolutely. Certain of the legatees afterwards commenced an action in the Probate Division against the executrix to set aside probate of the will, some of the plaintiffs being married women suing without their husbands; but the executrix obtained judgment with costs. After this some of the same plaintiffs, with other of the legatees commenced an action in the Chancery Division to administer the estate, the husbands of the married women now being joined as plaintiffs, and the executrix