rather late, viz., thirteen months after application. There is nothing shown to entitle him to have his name taken off the list of members. He could not do so if the company were not winding-up. He has agreed to have his name put on the list of members and is liable to contribute. There will be no costs.

M. R. GRAVATT v. TANN. Nov. 8.

Infant—Father—Application to dismiss a next friend.

Where an administration suit was instituted on behalf of some infants, a nominee of their father being next friend, and the suit being conducted by the father, the Court refused to dismiss the next friend upon allegations of improper motives.

This was an administration suit, instituted on behalf of some infants against the executors under a will.

Many parties were interested under the will. The bill was filed at the instance of the father of the children, though he was not their next friend. The evidence tended to show that the father had agreed to a certain arrangement as to the matters in question, and that, without any change of circumstances, he had filed the present bill out of personal pique towards one of the executors.

It was alleged that the contemplated arrangement would have been very beneficial to the children.

The present application was to have the next friend, by whom the children were represented, dismissed, and another appointed. This was with a view of bringing the suit to an end.

Jessel, Q.C., and *F. H. Colt*, in support of the application, contended that the conduct of the father was unreasonable, and that a sufficient motive had been shown to induce the Court to take the conduct of the suit out of his hands.

Selwyn, Q.C., and *Wickens* for the next friend were not called upon.

LORD ROMILLY, M.R.—I cannot stop this suit. This is a case where a grandfather divides his estate among forty persons, and questions arise as to the division, and the father of one branch files a bill against the executors, for though the father is not the next friend of his children, the bill must be considered as his. Where a stranger comes forward and institutes a suit on behalf of infants, and the Court thinks that the object of the suit is merely to make costs, it may interfere. Here the bill is filed at the instigation of the father, who ought to know most about the interests of his children; and I cannot interfere to stop the suit.

Solicitors, *J. A. Rose; T. F. Peacock.*

M. R. Nov. 15, 16, 19.

WILLINGATE v. MAITLAND.

Grant from the Crown—Validity—Forestal rights—Derogation from.

A grant made by the Crown to a class of persons in derogation of forestal rights will be more leniently construed than ordinary grants of common rights and profits.

Demurrer for want of equity.

The bill was filed by the plaintiff, on behalf of himself and the labourers of Loughton parish, in Epping Forest, to assert their right of lopping trees over the waste land of the manor consisting of 1,300 acres.

The bill stated a grant of Queen Elizabeth, as lady of the manor of Loughton, by her Royal charter, to lop trees in the manner shown in the prayer of the bill. It stated that the inhabitants of the parish had continuously exercised the rights thereby granted, but that the charter had been lost, and the verderer's court, which used to exist in the forest, no longer existed. The defendant Maitland, as present lord of the manor, claimed an absolute right to the timber on the waste-land, and intended to inclose the waste-lands, and sell the fee simple, and to build thereon, having purchased the forestal rights of the Crown over the lands.

The bill prayed for a declaration that the plaintiff and the other labourers of Loughton having families were entitled at all times, from the 12th November to the 24th of April in every year, to cut or lop the boughs and branches above the height of seven feet of the trees growing on the wastes of the parish in the manor of Loughton, for the proper use and consumption of themselves, and for sale to their own relief to all or any of the inhabitants of the said parish for their consumption within the same parish as fuel; and for an injunction to restrain the defendants from inclosing any land of the manor subject to this custom, or interfering with the exercise of the said right by the parishioners.

Baggallay, Q.C., Bristowe, and *Griffiths*, for the demurrer, contended that the alleged right could not be defended, as there could not be a grant to inhabitants generally—such a grant was too uncertain in regard of the number of persons who might claim the right, and in other respects unreasonable, as destroying the value of the property over which it was claimed: *Clayton* v. *Corby*, 5 Q. B. 415; Cruise Dig. tit. 23, sec. 1, par. 32, "Forest," and the cases there referred to; *Selby* v. *Robinson*, 2 T. R. 758, 1 Wm. Saund. 339, 340, c. note 3; A grant from the Crown is illegal if it gives a general right to sell or to take a *profit á prendre* in another's property: *Attorney-General* v. *Mathias*, 4 K. & J. 579; 6 W. R. 780; *Grimstead* v. *Marlowe*, 4 Term Rep. 717; Coke on Lyttleton, 41b, 122a; *Gateward's case*, 6 Rep. 374, 59 B.; *Constable* v. *Nicholson*, 14 C. B. N. S. 230; 11 W. R. 698; *Shakespear* v. *Peppin*, 6 T. R. 741. And in Sheppard's Touchstone, page 237, it is said that a grant made to the parishioners or inhabitants of Dale, or *probis hominibus de Dale*, are not good grants; for albeit these persons are capable, yet they are not capable by these names.

Joshua Williams, Q.C., Speed, and *W. R. Fisher*, for the bill.—This is a grant from the Crown, and is therefore good: Bacon's Abr. tit. Corporations, letter B.; *Re Newport Marsh Act*, 16 Sim. 346. The inhabitants of the parish are constituted a corporation for this particular purpose. This is a grant to inhabitants within a royal forest, which would make the claim good even if it were bad on other grounds: Co. Litt. 250a. Special rights were granted to the inhabitants of royal forests as some compensation for the harshness of the forest laws: Manwood's Laws of the Forests; Bacon Abr. tit. Corporation; and for this reason they are to be leniently construed as appears by statute 33 Edw. 1. [*Joshua Williams, Q.C.*, also referred to certain itineraries cited in the margin of 4 Inst. 294, and to be found in Hale's MSS., vol. 4, in Lincoln's-inn Library, to show that similar grants in Crown forests had been held good.] In statute 14 & 15 Vict. c. 43, a similar grant had been allowed to poor widows whose husbands had been dead a year. A gift to "poor" inhabitants was not too general, as such a gift had been held good in the case of several charities. The continuous enjoyment of the right makes the case of the plaintiff all the stronger. Suits to settle the customs of a manor are very common in equity: Spence's Equitable Jurisdiction, vol. 1, p. 657; *Adair* v. *New River Company*, 11 Ves. 429; *Philips* v. *Hudson*, 10 Sol. J. 705; *Mayor of York* v. *Pillington*, 2 Atk. 515. There is no uncertainty sufficient to make the grant illegal: *Grant* v. *Gunner*, 1 Taunt. 435.

Baggallay, Q.C., in reply.

Nov. 19.—LORD ROMILLY, M.R.—In this case the de-

fendant says that the grant claimed by the plaintiff is such a grant as cannot be legally made by the Crown. And they support their contention by showing that a custom of a similar nature would be bad at common law, and that it could not be claimed on the ground of prescription. But the plaintiffs admit this, and ground their claim on the special nature of the alleged grant from the Crown; and the authorities cited seem to show that a grant from the Crown in derogation of forestal rights is to be more leniently interpreted than any other grant. No authority has been cited to show that such a grant is not valid. The passage quoted from Shepherd's Touchstone applies only to grants from private individuals, and is an authority that such grants to a class such as the "poor inhabitants" of a parish would be void at common law. But the Crown has power to create corporations, and can make a grant of this nature, and constitute the grantees a corporation for the purpose of the grant. Equity allows a grant even by private persons in trust for a class of this nature, as is proved by several cases of charitable trusts, of which the books are full. The Newport Market Act is a distinct authority of grantees being constituted a corpororation *quoad* the particular grant, and the statute 14 & 15 Vict. c. 43, by which Hainault Forest was disafforested, acknowledged a claim very similar to this. The demurrer must be overruled in the usual manner.

Solicitors, *Tamplin & Tayler; Laurence & Co.*

V. C. S. MAXWELL *v.* HOGG. Nov. 8.
HOGG *v.* MAXWELL.

Copyright—Registration—Publication—5 & 6 Vict. c. 45, s. 19.

These were cross motions for *interim* injunctions to restrain the respective defendants in each suit from selling, issuing, or publishing a certain magazine or periodical under the name or title of "Belgravia."

Both parties had adopted the same name for their periodical, and in both cases the date of publication had been entered at Stationers' Hall as the same as that of registration, but as a matter of fact, the publication did not take place, in one case until about three years, and in the other until several months, after registration.

Malins, Q.C., and *Swanston*, for Mr. Maxwell.

Greene, Q.C., and *W. Morris*, for Messrs. Hogg.

STUART, V.C., said that, as the Act required that on registration the time of publication should also be truly entered in the register-book, it was clear that both parties had infringed the terms of the Act, and both motions must be dismissed.

Solicitors, *Linklater, Hackwood, & Addison; Ashurst Morris, & Co.*

V. C. S. Nov. 9.

Re ACCIDENTAL AND MARINE INSURANCE COMPANY.

Winding-up order—Several petitions—Costs.

This was the last of three petitions presented to wind up the above-named company, on the first two of which orders for winding-up had been made on the 3rd instant in this branch of the Court.

The present petition, which had been transferred from the court of the Master of the Rolls, was not advertised until after the two former petitions had been answered and advertised.

It was contended that, under these circumstances, and in accordance with the practice of his Lordship, the Master of the Rolls, the petitioner was not entitled to his costs.

Greene, Q.C., and *Bristowe*, for the petitioner, cited *In re The European Bank*, 2 L. R. Eq. Ser. 521, 35 L. J. Ch. 690, and contended that Vice-Chancellor Kinderaley's observations in that case went to the length of deciding that every petition must be looked at on its own merits, and that every petitioner presenting a valid petition was entitled to costs, irrespective of the number of petitions presented.

Malins, Q.C., and *Locock Webb, contrà*, stated that the practice in the court of the Master of the Rolls was to make the petitioner pay costs where he had notice of other valid petitions having been presented.

Bacon, Q.C., and *J. N. Higgins*, for the official liquidator.

STUART, V.C., said that if there were any doubt as to the practice, the case had better be carried to the Court of Appeal. He did not himself think that the observations of Vice-Chancellor Kinderaley went to the length contended for, and he could not, having regard to the duty of the Court to protect the assets of the company, allow costs to every creditor who might please to put a petition on the file. The Court should discourage the presentation of unnecessary petitions, and one presented after a previous petition had been advertised, seemed to him clearly to fall under this category. There appeared an extraordinary desire to present these petitions, he supposed on account of a notion that the petitioners were sure to get their costs. He understood, indeed, that the winding up companies had become quite a lucrative trade. But he would not countenance anything so injurious to the public or disgraceful to the Court. If a person, with the knowledge of a previous petition duly presented and properly advertised, chose to present a further petition, that person ought to pay the costs of all parties whom he improperly brought before the Court. The petitioner must pay the costs of all parties on the peiition in this case.

Solicitors for the petitioner, *Stibbard & Beck.*

Solicitors for the company, *Harrison, Lewis, & Co.*

V. C. S. EDMUNDS *v.* BROUGHAM. Nov. 16.

Practice—21 & 22 Vict. c, 27, s. 3 (Sir H. Cairns' Act) —Order of 5th February, 1861.

An order for the trial of issues of fact before a jury, or that the evidence in chief as to such facts might be taken viva voce *before the Court at the hearing, cannot be made on an interlocutory application in court, but the party seeking it must apply by summons to the judge in chambers.*

Malins, Q.C., and *J. Napier Higgins*, moved that certain questions of fact or issues arising in this suit might be tried by a special jury before the Court upon a day to be appointed for that purpose, or else that an order might be made that the evidence in chief as to the said questions of fact or issues might be taken *viva voce* at the hearing of the cause.

Issue had been joined between the parties, and the issues of fact proposed by the plaintiff to be tried set out in the notice of motion.

Osborne, Q.C., and *O. Morgan*, opposed, on the ground that the application could only be made in chambers, under the Order of the 5th February, 1861; and that as the application was virtually under the 8th section of Sir H. Cairns' Act, a trial of an issue by a jury could not, unless by consent of counsel on both sides, be directed until, at all events, the cause had been set down to be heard.

STUART, V.C.—Without touching upon the latter question, I think the course to have been taken should have been to come before me at chambers. I think it is rather a wanton thing to come here in the face of the