

RECENT ENGLISH DECISIONS.

away the grantor's right to take tolls over his bridge, which connected the land conveyed with the grantor's land on the other side of the river, did not preclude the grantee from taking away custom from the grantor's bridge by the erection of a new bridge; and the reservation to the grantor of a right to enter on the land conveyed for the purpose of repairing his bridge did not preclude the grantee from erecting a new bridge, so long as its erection did not interfere with the grantor's reasonable access for the purpose of repairing his bridge.

PRACTICE—ACTION TO PERPETUATE TESTIMONY—DEFAULT OF DEFENCE—EVIDENCE HOW TAKEN.

Bute v. James, 33 Chy. D. 157, was an action to perpetuate testimony, and the defendant having failed to deliver any defence, a question arose as to how the action was to proceed. The plaintiff moved for an order that the action might proceed notwithstanding the default of the defendant in not delivering a statement of defence, and asked the appointment of a special examiner to take the evidence of the plaintiff's witnesses, as if the pleadings were closed. Bacon, V.-C., made the order for leave to proceed, but refused to name a special examiner, and directed the examination to be taken before one of the official examiners.

TRUSTEE—SOLICITOR TRUSTEE—PROFIT COSTS.

The point involved in *re Corsellis, Lawton v. Elwes*, 33 Chy. D. 160, was whether a solicitor, who was one of two trustees under a will containing no power authorizing him to charge for professional services, was entitled to charge profit costs against the trust estate of legal proceedings in which the trustees were parties, and in others which the solicitor trustee, as surviving trustee, alone was a party, and which had been conducted by the firm of solicitors of which he was a partner, and their London agents. It was held by Kay, J., upon the principle that a trustee is bound to check all charges against the estate, and must not place himself in a position where his interest conflicts with his duty, that none of such profit costs ought to be allowed out of the estate to the firm of which the solicitor trustee was a member. There was also a further point determined in the case. The trustees appointed a partner of the solicitor trustee to be steward

of a manor which was part of the trust estate, and fees for manorial business were paid by the tenants of the manor to the partner as such steward, a share of the profit costs of which was claimed by the solicitor trustee, who also claimed a share of certain profit costs paid to his firm by lessees and others in respect of leases and agreements for leases of portions of the trust estate granted by the solicitor trustee, and prepared and carried out by him or his firm. Mr. Justice Kay held that neither the solicitor trustee nor his firm were entitled to any of such profit costs, but that the solicitor trustee must account to the trust estate therefor.

It will be observed that in the latter branch of the case the profit costs were not payable out of the estate, but had been paid by third parties, and the court not only deprives the solicitor trustee of all right thereto, but compels him to account for them to the trust estate, in which respect it seems to carry the law against a solicitor trustee deriving any profit from his trust to a point beyond what our own courts seemed disposed to do in *Meighen v. Buell*, 25 Gr. 604, where it was considered, not without doubt, that there was a distinction between costs payable out of the estate and costs payable by third parties.

COMPANY—WINDING UP ORDER—JURISDICTION—FOREIGN COMPANY WITH BRANCH OFFICE IN ENGLAND.

A question which has been frequently considered of late in our own courts came up for consideration in *re Commercial Bank of S. Australia*, 33 Chy. D. 174, viz., the jurisdiction of the court to make a winding up order against an Australian company having a branch office in England. Two petitions were presented by English creditors, and on the hearing of the petitions an order had been made appointing a provisional liquidator whose powers were limited to the taking possession of, and collecting and protecting, the assets of the company in England, and the further hearing of the petitions was adjourned for a time. When they came on again to be heard it appeared that a petition to wind up the company had in the meantime been presented in Australia, and that a provisional liquidator had been appointed there; but it was not proved that a winding up order had been made there, and it was held by North, J.,