

RECENT ENGLISH DECISIONS.

it can be said that it is necessarily incident to the business described by the rules that there should be a power to borrow." Before dismissing the case it should be stated that the Court of Appeal had held that, the Society having deposited certain deeds with the bank to be held as security for the balance from time to time, the bankers, though not able to hold these deeds as securities for the overdrafts, were able to hold them as a security for repayment of so much of the moneys advanced by them as was applied by the Society in payment of its debts and liabilities properly payable, and had not been repaid to the bankers. The decision on this point was not appealed against, and therefore the House of Lords was not called upon to give a decision as to it, nevertheless Lord Blackburn says at p. 866: "The Court of Appeal, in the present case, held that though there was nothing that amounted to an assignment to the bankers of the claims of those who were paid off by the money advanced, yet if it could be shown that such claims were in fact paid off thereby, there was an equity in substance to give them, the bankers, the same benefit as if there had been such an arrangement. This is an important decision. It seems to be justice; whether it is technical equity is a question which, I think, is not now before this House."

RULE IN SHELLEY'S CASE.

The other case in this number which seems to require notice is *Bowen v. Lewis* at p. 890. It certainly does not come within the theme of these articles to attempt to note in a concise form the decision upon the construction of what Lord Cairns calls "the very difficult and obscure will," which was before the House, much less to attempt to trace the reasoning in the different judgments, but there are one or two *dicta* on the Rule in Shelley's case to which attention may be called. The first is by Lord Selborne, at p. 898:

"The rule in Shelley's case, 1 Rep. 93 b, ought not, in my opinion, to be extended, so as to defeat unnecessarily the expressed intention, by straining the interpretation of such words as 'child or children,' when they are capable of being understood in their usual and primary sense," which he explains to be issue of the first generation. The second is by Lord Cairns, at p. 907, and throws a flood of light upon the true meaning of the rule in Shelley's case: "I observe that it has been said that the rule in Shelley's case, as it is called, is a technical rule, and that in considering whether you must apply the rule in Shelley's case, you ought to proceed as if you were dealing with a technical rule, and not to give way to technicality unless it be absolutely necessary. I am bound to say that in my opinion the rule in Shelley's case is not only not a technical rule, but it is the very opposite of a technical rule. It is a rule which has been established through a long course of decisions extending over a great many generations, and upon the ground, as I understand it, that it is desirable to avoid the effect of technicality. The foundation of the rule in Shelley's case, as I understand it, is this: You have an indication of a general intention, which you gather from the whole of the will, that the estate shall travel through the issue generally of a certain person. You have that accompanied, no doubt, with a particular intention that the first taker shall take an estate for life; but in order to give effect not to a technical construction, which would limit the first taker to a life estate, but to give effect to the general intention of the testator, and to make the estate travel through the issue generally, as the testator intended it to do, you apply the rule in Shelley's case. Otherwise, if you do not do that, the consequence is that the only other resource which you have is to give to the first taker in the series of issue an estate by purchase, in which case