

RECENT ENGLISH DECISIONS.

that if an unusual expense is about to be incurred in the course of an action, it is the duty of the solicitor to inform his client fully of it, and not to be satisfied simply by taking his authority to incur the additional expense, but to point out to him that such expense will or may not be allowed on taxation between party and party, whatever may be the result of the trial."

This concludes the cases requiring notice in the March number of the Q. B. D.

FORECLOSURE OF EQUITABLE MORTGAGES.

In the March number of the Chancery Division, 22 Ch. D. 283-483, the first case, *Lees v. Fisher*, p. 283, relates to the form of decree for foreclosure of an equitable mortgage. The L. C., in whose judgment the other Judges of Appeal concurred, says:—"We think that in the future foreclosure decrees in cases of equitable mortgages ought to contain the word 'foreclose.' They ought to contain directions that upon default of payment by the specified time the mortgagor will be foreclosed, that the mortgaged hereditaments will be discharged from all equity of redemption, and that a conveyance from the mortgagor to the mortgagee must be executed.

TRUST FOR SALE—PARTITION.

In *Biggs v. Peacock*, p. 284, a testator directed the trustees of his will, at such times and in such manner as they should think fit, to sell his copyhold estate, and to hold the proceeds in trust for his wife for life, and after his death for his children. All the children were of full age, and had attained vested interests, and the question was, whether the Court had jurisdiction under the Partition Act to direct a partition against the will of some of the children. The Court of Appeal held it had not, for the will contained a trust for sale; it was not like a power given by a will. The M. R. said:—"Any one of the *cestuis que trust* has a right to insist on the trust being carried out. It is a mistake to say that it is like a power given by a will. In

such a case the property in the estate is in the devisee. But here the estate is converted into personalty, and the *cestuis que trust* are only entitled to shares of the proceeds. Although, no doubt, if all are of age and *sui juris*, they could call upon the trustee to convey the estate to them; yet none of them has a right, in opposition to the others, to insist upon partition being made of it, which would be dealing with it as if it were real estate."

RIGHT TO INSIST ON EVIDENCE BEING HEARD—
APPELLATE COURT.

The next case requiring notice is *Ex parte Jacobson, in re Pangoffs*, p. 312, is authority on the following point, viz., that if a judge of first instance is prepared to decide in favour of a defendant or respondent without hearing his evidence, his counsel is entitled to insist that the evidence shall be heard before the decision is given; if, however, the counsel does not exercise that right, but accepts the decision in his favour on his opponent's evidence, the Court of Appeal has still power to allow the evidence to be taken before reversing the decision.

STAYING PROCEEDINGS—TWO ACTIONS IN DIFFERENT
COUNTRIES.

Passing by three cases which do not appear to have any application in this country, the next case to be noticed is *McHenry v. Lewis*, p. 397. This case is an authority on a point which arose among others in the recent case of *Hughes v. Rees*, before Ferguson, J., noted *supra*, p. 113. In *Hughes v. Rees*, it is laid down that the fact that a suit for the same matter is pending in Quebec, cannot be urged as a plea in bar to a suit for the same purpose in this country. In *McHenry v. Lewis* the question was whether or not when an action is brought by a man in this country against a defendant, and the same plaintiff brings an action in a foreign country against the same defendant for the same cause of action, this Court has jurisdiction in a proper case to stay the action in this country on the ground that the defendant is doubly vexed by