

had received the order from his client and handed it over to the mortgagee, that amounted to a virtual adoption of the letter, and precluded him from setting up his claim in priority to the mortgagee.

VENDOR AND PURCHASER—RESCISSION—FORFEITURE OF DEPOSIT, DEFECT IN TITLE SUBSEQUENTLY DISCOVERED—ACTION TO RECOVER DEPOSIT.

In *Soper v. Arnold*, 37 Chy. D. 96, the Court of Appeal (Cotton, L.J., Hannen, P.P.D. and Lopes, L.J.) affirm the decision of *Kekewick*, 35 Chy. D. 384, noted *ante* Vol. 23, p. 294. It may be remembered that this action arose under the following circumstances: The plaintiff had agreed to purchase a parcel of land from the defendant, and paid a deposit of the purchase money. He accepted the title and prepared the conveyance, but when the time for completion arrived he was unable to raise the rest of the purchase money, and in pursuance of the conditions of sale, rescinded the contract, and three years afterwards the vendor resold the property. Upon the investigation of the title upon this re-sale, a fatal defect was found in the title, and the first purchaser then brought the present action to recover his deposit. But the Court of Appeal held that he was not entitled to recover. It may also be observed that Cotton, L.J., takes the same view of the case of *Hart v. Swaine*, 7 Chy. D. 42, as was recently taken by Ferguson, J., in *Cameron v. Cameron*, 14 Ont. R., 582 *et seq.*

TRADE MARK—REGISTRATION—DISTINCTIVE DEVICE.

In *re Hanson's Trade Mark*, 37 Chy. D. 112, Kay, J., held that a trade mark of which the only distinction is its colour cannot be registered. Thus a red, white and blue label, with the words "red, white and blue" printed across it, was refused registration as a trade mark.

LEASE—EXECUTOR TAKING POSSESSION OF LEASEHOLDS OF TESTATOR—MEASURE OF LIABILITY.

In *re Bowes, Strathmore v. Vane*, 37 Chy. D. 128, North, J., discusses, at considerable length, the measure of liability of an executor who enters into possession of leaseholds to which his testator died entitled, and comes to the conclusion that he is personally liable for the rent subsequently accruing, up to the actual letting value of the demised premises during that period, whereas the lessor's right as against the testator's estate would be merely to prove his claim for the whole amount of the rent, and to be paid as any other creditor is paid. But the learned judge held that the personal liability of the executor could only be enforced by action against him, and that such relief could not be granted in an administration suit except with the consent of the executor.

HUSBAND AND WIFE—FEMALE WARD OF COURT—COSTS OF SETTLEMENT.

The simple point decided in *De Stacpoole v. De Stacpoole*, 37 Chy. D. 139, was that when on the marriage of a female ward of court a settlement of her property was ordered, the costs of all parties, including the husband, of such settlement should be paid out of the *corpus* of the settled property.