

RECENT ENGLISH DECISIONS.

had against the persons who were lessees when the rent accrued. Nor was the right defeated on the ground that on H. paying the rent he was entitled to a right of distress from the reversioners, which he had destroyed by taking an assignment of the leases; nor had he thereby discharged R.'s estate by releasing a remedy to the benefit of which R. as a surety was entitled; because a right of distress is not a security or remedy to the benefit of which a surety paying rent is entitled under The Mercantile Law Amendment Act, 19 & 20 Vict. c. 97, s. 5 (see R. S. O. c. 116, ss. 2, 3). H. also claimed to recover a gale of rent which had accrued prior to the assignment of the reversion which he had not been called upon to pay, and had not paid, but it was held that, as there was no assignment of the overdue rent, he was not entitled to payment of it as against R.'s estate. There was also a further claim made for dilapidations prior to H. acquiring the reversion. A demand had been made against H. by the reversioner, but he had paid nothing, and in order to get rid of the liability had bought the reversion; and he had also purchased the leases from R.'s assignees for a less sum than their actual value in consequence of the breaches of the covenant to repair. He had since sold the property, and it was held, reversing Kay, J., that in respect of this claim H. could not recover against R.'s estate.

RES JUDICATA—ESTOPPEL—JUDGMENT *IN REM*.

In the case of *De Mora v. Concha*, 29 Ch. D. 268, the Court of Appeal was called upon to consider the question of how far a judgment *in rem* is an estoppel as regards persons not parties to the proceedings. The case was very ably and exhaustively argued, and Mr. Rigby, Q.C., for the respondent, received the somewhat unusual compliment of being publicly thanked at the conclusion of his argument by Lord Justice Baggallay on behalf of himself and

his colleagues for the ability he had displayed. The facts of the case were as follows: A native of Chili made his will in London; he died in 1880. The will was propounded in solemn form, the executors alleging that the testator was domiciled in England. A daughter who contested the proof alleged the testator was domiciled in Chili, and that his will was not executed according to the laws of Chili. In 1860 the judge of the English Probate Court found that the testator was domiciled in England, and that the will was valid and granted probate to the executors. In November, 1860, a decree of administration was pronounced in the suit of the executors against the residuary legatee and a pecuniary legatee. In 1862 the daughter filed a bill against the executors, alleging that the testator was a domiciled Chilian; that his will being executed in England according to English law was good according to the law of Chili, but only so far as by the law of Chili he could dispose of his property by will; that according to that law he could only dispose of one-fourth of his property, and that the remaining three-fourths belonged to the daughter. The executors set up the decree of the Probate Court as a bar, and no further proceedings were taken in the suit. In 1877 an order was made staying proceedings in the latter suit, but giving liberty to any of the parties to apply to add to the decree in the administration suit all accounts and inquiries necessary to determine the questions in the suit so stayed. Pursuant to this leave the daughter and her husband applied to add to the decree inquiries as to the legitimacy of the daughter, and the domicile of the testator. In 1878 an order was made directing an inquiry as to the legitimacy of the daughter, the rest of the application to stand over. In 1881 and 1882 the conduct of the cause was transferred from the plaintiff (the surviving executor) to the residuary legatee, and