

## RECENT ENGLISH DECISIONS.

RECEIVER—MORTGAGOR AND MORTGAGNE—MORTGAGOR  
IN POSSESSION—OCCUPATION RENT.

The short point determined by Chitty, J., in *Yorkshire Banking Company v. Mullan*, 35 Chy. D. 125, was this: that when in a mortgage action a receiver is appointed, and the mortgagor is in possession, the latter is not liable for an occupation rent from the date of the appointment of the receiver, but only from the date of the receiver demanding rent, the receivership order containing no order that the mortgagor should deliver up possession, or pay rent.

POWER OF APPOINTMENT—EXCESSIVE EXERCISE OF  
POWER—VALIDITY OF APPOINTMENT, IN DEFAULT OF  
EXERCISE OF DELEGATED POWER.

In *Williamson v. Farwell*, 35 Chy. D. 128, it was held by North, J., when the donee of a power of appointment among his own children appointed to his son for life with remainder to his son's children as he should appoint, and in default of such an appointment to the son absolutely, and the son died without exercising the power thus delegated to him, that the ultimate limitation in favour of the son was valid and took effect notwithstanding the invalid delegation of the power to him.

AGREEMENT IN RESTRAINT OF TRADE—INJUNCTION—  
PARTIAL ENFORCEMENT.

*Baines v. Geary*, 35 Chy. D. 154, was an application for an interim injunction to restrain the defendant from violating an agreement, made by him on entering the plaintiff's service as a milk carrier, not to serve or interfere with any customer belonging to the master, his successors or assigns. It was contended that the agreement was wider than was reasonable, and therefore invalid. But North, J., held that though the argument might be wide enough to include all the persons who might at any time be customers of the plaintiff, still it was divisible, and might be enforced to the extent to which it was valid, and he granted the injunction, but limited to such persons as had become customers of the plaintiff before the defendant left his employment.

PRACTICE—WRIT OF SUMMONS—DEFAULT OF APPEAR-  
ANCE—STATEMENT OF CLAIM.

In *Gee v. Bell*, 35 Chy. D. 160, it was held by North, J., that where a plaintiff, in default of appearance, delivers a statement of claim

by filing it with the proper officer, he cannot obtain judgment in default of appearance for more than he has claimed by his writ. If the plaintiff in such a case desire to claim further relief than that claimed by the indorsement on the writ, it would seem that he must amend and re-serve his writ.

PRACTICE—ACTION FOR ACCOUNT—PAYMENT INTO  
COURT BEFORE TRIAL.

*Wanklyn v. Wilson*, 35 Chy. D. 180, was an interlocutory application to compel the defendant to pay into court before trial, moneys alleged to be in his hands—the action being one for an account—and it was held by Stirling, J., that an account having been rendered, and the court having before it the parties to the account, and evidence as to the items in dispute, that such sum might be ordered to be paid into court before trial, as the court, in the exercise of its discretion, should consider would be found due to the plaintiff on the taking of the account.

PRACTICE—SPECIFIC PERFORMANCE—DEFENDANT NOT  
APPEARING—RESCISSION OF CONTRACT—JUDGMENT.

The only remaining case to be noted is *Stone v. Smith*, 35 Chy. D. 188, in which it was held by Kekewich, J., that in a vendor's action for specific performance of a contract to purchase leaseholds, in which the defendant by his statement of defence admitted that he was unwilling to complete the contract, and did not appear at the trial: the plaintiff was not entitled to an immediate judgment, rescinding the contract and forfeiting the deposit, but only to the usual judgment for specific performance.