

RECENT DECISIONS.

the directions contained in the testator's will, carries on the testator's business, and in so doing contracts debts, the fact that he has carried on the business in his own name, and that the testator's assets employed in it are ostensibly the executor's own property, will not entitle a judgment creditor of the executor to take in execution the testator's assets; but (2) lapse of time and an enjoyment of the assets in a manner inconsistent with the trusts of the will, coupled with the consent of the beneficiaries, may raise an inference of a gift of the assets by them to the executor, and entitle his judgment creditor to take them in execution. Yet (3) when the possession and the time which has elapsed are in accordance with the trusts of the will, no such inference can arise.

MORTGAGE.

Ex parte Harrison, in re Belts, p. 127, is also a case "entirely covered by authority" (per Bacon, C. J.), the points decided being (1) that the proceeds of a distress for rent levied under an attornment clause in a mortgage deed are, in the absence of any provision to the contrary in the deed, applicable to the payment of principal as well as interest; and (2) the fact that the yearly rent reserved by the attornment clause is equal in amount to the yearly interest of the mortgage debt as provided by the deed, and is made payable on the same days, is not of itself sufficient to displace the *prima facie* right of the mortgagee to apply the proceeds of the distress in satisfaction of principal as well as interest.

PURCHASE BY RAILWAY—STATUTORY CONSTRUCTION.

In *in re Pigott & the G. W. Ry. Co.*, p. 146, there is a point decided which seems to call for some notice, viz., that a complete contract being established between a railway company and a landowner by the notice to treat, and an award under the Imp. Lands Clauses Consolidation Act, 1845, fixing the amount of the purchase money, the ordinary rules as between vendor and purchaser apply to such a contract, including the liability of the purchasing company, in a proper case, to

pay interest on their purchase-money. The two sections of the Imperial Act, relied on as altering the general law, do not, however, occur in our General Railway Act, (R. S. O. c. 165), though it may be remarked that the argument grounded on sec. 75 of the Imp. Act might be raised equally speciously on sec. 22 of R. S. O., c. 165. The former provides that on deposit in the bank of the compensation awarded, the owner shall when required convey,—and the latter provides that upon payment of the compensation awarded, or on its deposit, as in that Act provided, the award shall vest in the company the power to take possession of the lands, and in neither case is interest mentioned. But as to this, Jessel, M. R., says (p. 152): "No doubt in the ordinary case, where the interest is payable, the vendor is not bound to convey till his purchase money and the interest thereon are paid to him; but the mere fact of his conveying without the payment of the interest would not deprive him of the interest: and in some cases, as we know, he has got interest even after the conveyance, so it is no conclusive that, because on payment the vendor is bound to convey, he therefore loses the interest when he is entitled to it." He ordered the Company to pay interest at 4 per cent. per annum on the purchase-money from the time when they might have taken possession or entered into the receipt of the rents, on a good title being shewn. It may be added that at p. 151, the M. R. observes that where it is not contended that there is any enactment in words, but where the Court is asked to infer an enactment from certain provisions to be found in the Act,—in such cases the argument of reasonableness and common justice ought to have great weight.

RAILWAYS.

The next case,—*In re Birmingham and Lichfield Ry. Co.*,—is a decision of the M. R. that a railway company which has never commenced to acquire the lands or construct the railways authorised by their Act is not an