

## RECENT ENGLISH DECISIONS.

soon after as counsel can be heard"; it was objected that the day on which it was returnable the court did not sit, and that the notice was therefore void; the Court of Appeal however overruled the objection.

## COSTS—EFFECTS OF JUDICATURE ACT ON JURISDICTION TO AWARD COSTS.

The only point it is necessary to refer to in *re Mills' Estate*, 34 Chy. D. 24, is that regarding the effect of the Judicature Act on the jurisdiction to award costs. The application was one for the payment out of Court of the purchase money paid in under an Act authorizing expropriation of land, and the question was whether the commissioners authorized to make the expropriation could be ordered to pay the costs of the application. The Court of Appeal was clear that before the Judicature Act there was no jurisdiction to award cost against commissioners, and they were equally clear that the Judicature Act did not enable the Court to order costs as against persons, who up to the time of the passing of that Act, were not liable to be ordered to pay costs, following *Foster v. G. IV. Ry. Co.*, 8 Q. B. D. 515, and overruling *Ex parte Mercers' Company*, 10 Chy. D. 481. The order of Bacon, V.C., was therefore reversed.

## COMPANY—DEBENTURES SEALED BUT NOT DELIVERED—DEBENTURES PAYABLE TO BEARER.

In *Mowatt v. Castle Steel and Iron Works Company*, 34 Chy. D. 58, the Court of Appeal affirmed a decision of Chitty, J., Debentures payable to bearer were prepared, sealed and stamped by the secretary of a company pursuant to instructions from the directors, for the payment of advances to the company. These were placed in a box, the key of which was kept by the secretary, and the box was deposited in the office of the company, which was also the office of T., one of the directors, who had made large advances to the company. Some of the debentures were given out by the secretary to an agent for him to issue to the public, which he did not succeed in doing. The company was ordered to be wound up, and after the commencement of the winding up the agent returned the debentures to T., who gave some of them to R. & Co., his own creditors, who took them, believing them to have been regularly issued to T., and that he had power to dispose of them. But it was

held that the debentures had not been duly issued before the winding up, and that the other debenture holders of the company were entitled to dispute the validity of the debentures held by R. & Co.

## WILL—POWER OF APPOINTMENT—GENERAL DEVISE AND BEQUEST—(R. S. O. c. 106, s. 29).

The case of *In re Jones, Greene v. Gordon*, 34 Chy. D. 65, turns upon the effect of the Wills Act, 1 Vic. c. 26, s. 27, from which R. S. O. c. 106, s. 29, is taken. A testator by his will, dated in 1884, after giving his residuary real and personal estate upon certain trusts for the benefit of his widow and his daughter, and the daughter's children, empowered his widow by will to appoint that any sum or sums of money, not exceeding £20,000, should be raised and applied as she should think fit. The widow by her will, dated in 1885, devised and bequeathed all her estate and effects, real and personal, which she might die possessed of or entitled to, unto her daughter absolutely; and the question was whether this general devise was under the statute to be construed as an appointment of the £20,000 in favour of the daughter; and Kay, J., determined that it was.

## TRUSTEE—NEGLIGENCE—MORTGAGE OF HOUSES—VALUATION.

The well-worn subject as to the liability of trustees for investment of trust funds on insufficient security is again discussed by Kay, J., in *Re Olive, Olive v. Westerman*, 34 Chy. D. 70. In this case the trustees, having power to invest the trust funds on leaseholds, invested the money upon a mortgage of a leasehold property which consisted of cottages. The evidence showed that a proper valuation was not obtained by the trustees, and that the sum advanced was about two-thirds of the real value of the property, which subsequently became depreciated, and was subject to large outgoings for paving and sewerage—under these circumstances Kay, J., held the trustees, though acting *bona fide*, had made an improper investment, and were liable for the loss.

## SOLICITOR TRUSTEE—PROFIT COSTS.

In *Re Barber, Burgess v. Vinicombe*, 34 Chy. D. 77, Chitty, J., had occasion to consider whether *Cradock v. Piper*, 1 Mc. & G. 664, is to be considered as overruled. In that case it may be remembered Lord Cottenham held that a solicitor trustee acting for himself and