

## RECENT ENGLISH DECISIONS—CRITICISING JUDGES.

of the court and that the plaintiff was, therefore, entitled to no relief. Kay, J., held that the plaintiff was entitled to proceed with the action, on the ground that it was not *res judicata*; but the Court of Appeal reversed this decision, holding that, although it is true the case was not *res judicata*, yet that the plaintiffs might have set up the claim to have the agreement re-formed before the action brought against them by the defendant was concluded, and not having done so, they were now too late, and the action was, therefore, dismissed.

Cotton, L.J., says at p. 34:—

Now was it open to the present plaintiffs to raise this question during the pendency of the former suit? Clearly it was. They might not have been able to raise it in that action, but they might have commenced an action for the purpose, and the court would not have disposed of the former action while the new one was pending. It would be against the principles on which Courts of Equity act, to allow an action for rectification to be commenced at so late a stage as that at which the present action is brought. . . . Here, nothing remains to be done under the contract, if it should be varied. Mr. Hastings suggested that, if it were rectified, the plaintiffs might bring an action for damages. I think there is nothing to give the plaintiffs such right of action. The defendants obtained in the former action a judgment which was right on the materials then before the court, and the present is an attempt to get back money paid under a judgment, which is not impeached for fraud, and, in my opinion, such an action cannot be allowed to proceed. I agree with Mr. Justice Kay, that there was no *res judicata*; but an attempt to re-form a spent agreement, and recover the money which has been paid under it, cannot be allowed.

## LUNATIC—MORTGAGE OF LUNATIC'S ESTATE TO PAY ANCESTOR'S DEBTS.

The only other case to be noted is *In re Fox*, 33 Chy. D. 37, in which the Court of Appeal authorized the committee of a lunatic, who was entitled to a moiety of an estate in fee, to join in a mortgage with the owner of the other moiety for the purpose of raising a sum of money to pay off certain debts of the lunatic's ancestor, for which the land was liable; but directed the mortgage to be framed so that the lunatic's moiety should only be liable for a moiety of the mortgage debt and interest, and so that it should not be liable for any default of the co-owner of the estate in payment of the other moiety of the principal and interest; and the court declined to authorize the committee to enter into any covenant on behalf of the lunatic for payment of either the principal or interest of the mortgage debt.

## SELECTIONS.

## CRITICISING JUDGES.

We reprint by request an article entitled "Are judges above criticism," and find no difficulty in answering the question. If ever there was a "divinity that doth hedge a" judge, and secure him against public animadversion, that protection has surely been withdrawn. The privilege is now freely used by the press and the public, of criticising not only the formal and *ex-cathedra dicta* of the courts, but their minor and incidental rulings and every exercise of that elastic and indefinite power denominated judicial discretion. And this is as it should be. There is no reason why judges should not be held to a responsibility to public opinion not less stringent than that of political officers. Indeed, as judges hold their offices, if not by a life tenure, at least for a long term of years, and as their removal from office can rarely be effected by impeachment or otherwise, and only in cases of flagrant offences, the reason is stronger for their responsibility to public sentiment, than for that of the political officer who must needs face his constituents, within a year, or two, or three, and stand or fall upon the account he can then give of his stewardship.

Of course we will not be understood as saying that judges should be swerved or controlled in their judgments by popular sentiment. On the contrary, quite the reverse. They should declare the law, and administer justice irrespective of all outside influences. While their duty in this respect is plain, the right of the public to criticise and discuss their performance of it is equally clear. In many minor matters however, judicial notice may well be taken of lay criticism. If a judge is too slow, permits unnecessary delays, allows cases to go over from term to term, or if he falls into the opposite error, forces counsel to premature trial of their cases, and thereby produces a plentiful crop of appeals, writs of error and reversals, it is well that his fault should be fully ventilated in newspapers or anywhere else. And if a judge is tyrannical or peevish, or impatient, any one may well say so. In England, lately,