

## RECENT ENGLISH DECISIONS.

having been made on the land, the landowner brought this action for an injunction to restrain the company from executing works on the land, and from continuing in possession of it. The Court of Appeal held, reversing Fry, J., that the entry of the company was wrongful, and that the plaintiff was entitled to the relief asked. The Lord Chancellor says, p. 53:—"For a company to enter under sec. 85, on the eve of the expiration of all its general powers applicable to the land on which it so enters, not for the purpose of making any statutory works under the statutory powers, but for that of acquiring a possessory title to the land against the landowner, and then making a railway over it not under the Act, but as under an ordinary landowner's title, is, in my opinion, an abuse of the Act, which can confer no right upon the company after the expiration of their powers, which they would not otherwise have possessed. The M. R. uses very similar language, p. 55, and then goes on to consider a further question, though unnecessary for the decision of the case, he says:—"But there is a point to which the Lord Chancellor did not refer, and as to which I desire to express my opinion, namely: supposing the entry had been rightfully made, what would have happened after the thirteen days? It appears to me, that then the right of retaining possession of the land would have come to an end. There is no right to enter, and use, except for the purposes of the Act. It is not merely entering that is authorized, it is entering and using. If the company cannot use, it seems to me that it cannot retain possession against the landowner. . . . When the time limited for making the line has expired, he (the landowner) says:—'You cannot do that for which alone you had a right to take my land, and for which alone you had a right to deprive me of the possession of my land, and your right to retain possession has therefore ceased.' It seems to me that both at law and in equity that would be an answer to any claim set up by the company to retain pos-

session of the land after the powers had ceased." Cotton, L.J., also, p. 57, expresses a similar view on this latter point, and he also observes:—"I do not say that where they (the railway) are owners of land, and can complete their railway upon it, without interfering with public rights, or with the rights of individuals, anybody, except perhaps the shareholders, or the Attorney-General could stop them from going on, and as landowners, completing their works on the land which they have already acquired under the powers of their Act."

## COMPANY—BORROWING POWERS—OVER-DRAWING.

In the next case, a certain benefit building society, whose rules neither expressly authorized, nor expressly forbade the borrowing of money, were permitted by their bankers to overdraw their account to a large amount. In 1876, the directors of the society agreed that certain deeds of borrowing members which had been deposited with the bankers, were deposited not only for safe custody, but as a security for the balance from time to time due. The Court of Appeal now held that the over-drawing of the bankers' account was *ultra vires*, being a borrowing unauthorized either by the rules or the objects of the society, and no borrowing can be permitted without express authority, unless it be properly incident to the course and conduct of the business for its proper purposes." Therefore, they held that the bankers had no lien on the deeds, either under the agreement or by the course of dealing with the society; nevertheless, they held that as far as it could be made out that the moneys which were advanced by the bankers, simply went to pay the legitimate debt and liabilities of the society, the bankers ought to have the benefit of their security. They refer to the "general principle of equity, that those who pay legitimate demands which they are bound in some way or other to meet, and have had the benefit of other people's money advanced to them for that purpose, shall not retain that benefit, so as, in substance, to make