

to the making of the codicil, was as residuary legatee estopped, as against the plaintiff, from setting up the debts due by him to the testatrix.

INCORPORATED COMPANY.—IMPLIED POWER TO BORROW MONEY.

*General Auction Co. v. Smith* (1891), 3 Ch. 432, is a decision of Stirling, J., the action being one brought by a liquidator of a company being wound up, to set aside a security held by the defendant for a loan, on the ground that it was *ultra vires* of the company to borrow money. The company was incorporated for the purpose of purchasing and selling estates and property, and of making advances on property intended for sale, and loans on deposit of securities, and for the discounting of bills, but it had no express power under its articles of association to borrow money. The loan for which the security had been given was made by the defendant for the purpose of enabling the company to carry on its business. Stirling, J., held that, the company being incorporated for the purpose of trading, there was an implied power to borrow money for the purposes of its business, and therefore that the security sought to be impeached was valid.

PRACTICE.—SERVICE OUT OF JURISDICTION.

*In re La Compagnie Generale D'Eaux Minerales, etc.* (1891), 3 Ch. 451, shows that where a party is pursuing a statutory remedy (in this case it was an application to strike out a registered trade mark) he cannot, unless he be authorized so to do by statute, serve a party out of the jurisdiction with notice of the motion, and, on application of the party thus served, the service was set aside as an abuse of the process of the court. Stirling, J., was of opinion that in such a case it was proper to proceed on notice to the comptroller, the absent party being notified that proceedings are pending in court which may affect his interests, leaving it for him to appear and submit to the jurisdiction of the court if so advised.

COMPANY.—SURRENDER OF SHARES.—ISSUE OF NEW SHARES IN EXCHANGE.—PREFERENCE SHARES.

In *Eichbaum v. City of Chicago Grain Elevators* (1891), 3 Ch. 459, the right of a company to pass special resolutions authorizing the increase of its capital by the issue of new shares, with preferential rights as to payment of interest and repayment of capital, and empowering the allotment of such new shares as fully paid up to any holder of ordinary shares, in consideration of the surrender of an equivalent amount of ordinary paid up shares, was contested. It was contended that the resolution amounted either to an authority to issue gratis shares which ought to be paid for in cash or property, or else as an authority to the company to buy its own ordinary shares and to give preference shares in exchange as the price of the purchase, contrary to the decision of the House of Lords in *Trevor v. Whitworth*, 11 App. Cas. 409; and, further, that it was *ultra vires* of the company to alter the rights of the ordinary shareholders so that some shall be preferred. Stirling, J., however, upheld the resolution, provided that the surrenders of the ordinary shares were made *bond fide* and not for the purpose of enabling the shareholders to escape liability, following *Teasdale's Case*, L.R. 9, Ch. 54, which he holds not to have been overruled by *Trevor v. Whitworth*.