Jessel, M. R., refused to follow *Coote* v. *Wittington*.

Malins, V. C., may not unfairly be classed as one of the erratic Judges above alluded to. He deals with the question we are considering in his own peculiar style, as reported in *Ferrier* v. *Jay*, 23 L. T. N. S., 302. "This point," he says, "has been before two learned Judges, whose decisions are in direct opposition to one another. On the bulk of the authorities, I am bound to follow the latter of the two decisions. Although all the authorities do not appear to have been cited in that case, I must assume that the Vice-Chancellor had them all in his mind when he made that decision."

Of the Irish Bench, Lord Justice Christian may be taken as one of the most illustrious types of the judicial Ishmaelite that the annals of the law can exhibit. His views upon this subject are given in *Re Tottenham's Estate*, Irish R. 3 Eq. 528: "When the decision of one Court is cited to another of co-ordinate authority, the latter has a right to regard it in a critical and even sceptical spirit; and while accepting the decision, to decline the reason of deciding, if a better one can be assigned. But I confess, I think that when an inferior Court (I mean inferior in the sense of curial procedure) has before it the decision of its non-appellate tribunal, it is the duty to conform itself frankly and loyally to the reason of the decision, and not merely to its letter."

The decision of a co-ordinate branch of the Court, or of a Court of co-ordinate jurisdiction, will be followed till reversed on appeal, in order to avoid an unseemly conflict of decisions: Per James, V. C. in *Re Times Assurance Co.*, 18 W. R. 404, and see also *Re Hotchkiss's Trusts*, L. R. 8 Eq. 643. In *Boon* v. *Howard*, 22 W. R. 541, Keating, J., is reported to say, "There is no positive rule which precludes the Court from examining its previous decisions, though those are to be departed from only on the strongest grounds. The Court ought to respect its own decisions and those of other Courts."

In *Owen* v. *London R. Company*, 17 L. T. N. S. 210, Cockburn, C. J., held, that as the authorities were somewhat divided, the Courts were entitled to exercise their own independent judgment on the question to be decided. In such a conflict of authority, the earlier decision was followed by Romilly, M. R., in *Hall* v. *Bushill*, 12 Jur., N. S. 243. But in making a choice among conflicting decisions, the considerations which ought to influence the Court are well expressed by Mr. Justice Jebb in *Loveland Coyne* v. *Bartley*, Alc. & Nap. 308, "When the Court is obliged to decide upon conflicting decisions, and one of them is of late date, of unquestionable authority, and is adopted by compilers, and text and elementary writers of character, and is also in accordance with the opinions of the Bar, so far as we can collect it from a series of authorities and precedents, we should not be warranted in making a decision contrary to that opinion."

(*To be continued*)

SELECTIONS.

TESTAMENTARY POWERS OF SALE.

There is, perhaps, no class of instruments which come under the cognizance of the law, where the intention of the parties is to form an element of consideration, in which greater difficulty arises in ascertaining that intention and enforcing it in accordance with the rules of law, than in wills; and in no branch of the construction of wills have the courts been driven to a greater nicety than in the interpretation of powers and trusts, and the discrimination between these two. To add to the inherent difficulties of the subject, the department of trusts is of later origin, or rather development, than the general rules of real property, and the enunciation of these by the elder authorities of the common law; and these latter,