

## RECENT ENGLISH DECISIONS.

if the mortgagees had been pressing for a settlement. Bowen, L.J., however, dissented, and was in favour of directing a taxation, considering that the mortgagee's solicitor had taken advantage of the inconvenience which would have resulted from delay which, in his opinion, amounted to a special circumstance.

## AGREEMENT TO ASSIST IN AN ILLEGAL BUSINESS.

The case of *Davies v. Makuna*, 29 Chy. D. 596, although turning on the construction of certain acts of parliament having merely local operation, is nevertheless deserving of notice as establishing an important general principle. The plaintiff, who was disqualified by statute from practising as a medical practitioner, carried on that business, and engaged the defendant to assist him, and the defendant bound himself not to practise in the same town for five years after the close of the engagement. The action was brought to restrain the defendant from violating this contract. But the Court of Appeal, reversing the decision of Pearson, J., held the agreement to be illegal. The Court, however, seem to have been of opinion that if the plaintiff had merely carried on the business of a medical practitioner by means of duly qualified assistants without himself acting personally, that the case would have been different, and the plaintiff under such circumstances might have been entitled to an injunction.

VENDOR AND PURCHASER—CONDITIONS OF SALE—  
RIGHT TO RESCIND.

The Court of Appeal in *Dames v. Wood*, 29 Chy. D. 626, affirm the decision of Bacon, V.-C., 27 Chy. D. 172, which we noted *ante* Vol. 20, p. 416. Property had been sold subject to a condition that if the purchaser should take any objection or make any requisition which the vendor was unable or unwilling to comply with, the vendor might rescind the contract. Requisitions were delivered which the vendor refused to comply with, the purchaser insisted on them, and the vendor then rescinded the contract. The purchasers objected to the rescission and withdrew the requisition, and expressed their willingness to complete, but the Court held that the purchaser could not thereby prevent the rescission of the contract.

BONUS DIVIDEND—CAPITAL OR INCOME—TENANT FOR  
LIFE AND REMAINDERMAN.

The case of *In re Bouch, Sproule v. Bouch*, 29 Chy. D. 635, is a decision of the Court of Appeal reversing a judgment of Kay, J. The question in controversy arose as to the relative rights of a tenant for life and remainderman to certain bonuses and additional shares in a company allotted in respect of shares of which the tenant for life was only entitled to the income. The shares in question formed part of the residuary estate of a testator which was bequeathed in trust for his widow for life. After the testator's death a reserve fund of £100,000 and an "undivided profit fund" of £36,070, more than half of which arose from profits earned before the testator's death, were distributed by the company among the shareholders as a bonus dividend, and certain new shares were created and allotted to the existing shareholders in proportion to the number of shares held by them, on which £7 10s. was to be paid on each share on allotment. The trustee under the will accepted the shares, and paid the call thereon out of the bonus dividend. After the death of the tenant for life, the question arose whether the new shares, having been paid for out of the bonus dividend, were the property of the deceased tenant for life's estate, or whether the remainderman was entitled thereto. Kay, J., held that the bonus dividend and the new shares were capital, but the Court of Appeal now determine that there is no rule that where a sum, whether called bonus or dividend, is distributed by a company among its shareholders it must, if it is paid out of the accumulated profits of past years, be treated between tenant for life and remainderman as capital. The real question is whether the company, having the power of distributing its profits as dividends or of converting them into capital, has taken the former or the latter course.

VENDOR AND PURCHASER—DEFECTS IN TITLE—  
LICENSE TO ASSIGN.

The case of *Ellis v. Rogers*, 29 Chy. D. 661, is another decision of the Court of Appeal in which they affirm the judgment of Kay, J., but on different grounds to those assigned by that learned judge. The action was brought by a vendor against a purchaser to recover dam-