

RECENT ENGLISH DECISIONS.

trary to the spirit of the Wills Act in an agreement to make a will, than there is contrary to the Acts relating to conveyances in an agreement to make a deed.

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Continuing with the June number of L. R. 20 Ch. D., the next case which it appears expedient to notice is *Re Haven Gold Mining Co.*, p. 151.

COMPANY—WINDING UP—ONT. 41 VICT. C. 5, S. 4, SUBS. 5.

The Imp. Companies Act, 1862, s. 79, subs. 5, corresponds with our 41 Vict., c. 5, s. 4, subs. 5, and under both these enactments a Joint Stock Company may be wound up by the Court, "Whenever the Court is of opinion that it is just and equitable that the company should be wound up;" and the question was whether under the circumstances of this case, which the M. R. said was altogether novel in some of its salient features, the Court would order a winding up. The company in question had been formed; in the words of the prospectus, "for the purpose of acquiring and developing the property called the Haven Claim," in New Zealand; the mineral rights in which, the company had agreed to purchase from one Hance; but the memorandum of association contained general words enabling the company to purchase and work other mines in New Zealand. Some months after the registration of the company it was discovered that Hance had no good title to the claim. An extraordinary meeting of the company was then called by the directors, and the circumstances laid before it, but the shareholders, by a large majority, declined to wind up the company. The present petition for a winding up was then presented by two shareholders, on the grounds that the company had no title to the property mentioned in the memorandum and prospectus; that it was promoted solely for the interests of the promoters, and could not be carried on to the advantage or profit of the shareholders; and

that many statements in the prospectus were untrue and misleading, and that the company was a mere bubble and sham. After the presenting of this petition the directors issued a circular to the shareholders stating their opinion that it was hopeless to go on with the undertaking, and advising a voluntary winding up; and at the same time they summoned an extraordinary meeting, at which, however, an overwhelming majority of the shareholders agreed that there was no necessity for a winding up, and expressed a wish that the Court of Chancery would dismiss the petition. Bacon, V.C., in the Court below, dismissed the petition, (i.) because the charges of fraud had not been made out, and "it is a well-established rule in this Court that if a man alleges a fraud practised by his opponent, and fails to prove it, his petition or application must be dismissed"; and (ii.) because of the resolution of the majority of the shareholders that the matter should go on, and that the directors should continue to accomplish, if they could, the objects of the company. "Upon the result of that meeting," he says, "in my opinion, every question of merits was wholly and completely concluded. The cases that have been referred to established, as the law of the Court, that when it is not impossible to carry on the project, when it is not absolutely clear that no good can ever come of the proceedings to accomplish the project, the Court will not interfere." The Court of Appeal, however, now over-ruled this decision, and made the usual winding up order. Jessel, M.R., says, p. 161:—"No doubt—and I have not forgotten it—there are general words in the memorandum and articles of association extending the right to work mineral property generally; but the object of the company, or the special object in the memorandum of association, is to work this gold mine; and the point which I have to consider is whether there is any mine at all as to which the company has a title or a contract which may eventuate in title." Having considered this question, he concludes thus:—"There is evi-