

as C. E. K. should appoint, &c. T. C. K. died.

Held, that under these conveyances the plaintiffs could, on the request of C. E. K., make a good title to the lands in question in fee.

The manner in which deeds had been drawn was such as to invite inquiry as to the power of trustees to convey; and, therefore, although the Court had not any doubt of the effect and operation of the conveyances, it refused, on an investigation of title under the Vendor and Purchaser's Act, to give to either any costs of the inquiry.

CHANCERY CHAMBERS.

Referee.] [June 3.
Proudfoot, V. C.] [June 9.

RE SOLICITORS.

Sale under power in mortgage—Solicitors' costs—Taxation by subsequent encumbrancer.

First mortgagees sold under a power in their mortgage and paid their solicitor's cost of sale. A subsequent encumbrancer obtained from the Referee, on motion, an order for the taxation of the solicitor's costs.

This order was reversed by Proudfoot, V. C., on appeal, and the objection that the order should have been obtained by petition, not notice of motion, was disallowed.

Referee.] [June 11.
Blake, V. C.] [June 19.

GZOWSKI v. BEATY.

Deposit for sale—Who entitled to—Subsequent encumbrancer.

A first mortgagee filed his bill for foreclosure, and the official assignee of the insolvent defendant's estate paid into Court \$150 to secure a sale. After the sale, the Referee made an order for payment out to the assignee of this deposit.

Bain, for the Imperial Bank, a subsequent encumbrancer, appealed from the order of the Referee, and contended that deposit should be paid to the latter.

McDonald, *contra*.

Creelman, for the plaintiff.

Blake, V. C., allowed appeal with costs.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR AUGUST, SEPTEMBER, AND OCTOBER, 1878.

ABSOLUTE GIFT.—See WILL, 2.

ACCEPTANCE.—See BILLS AND NOTES; COMPANY, 2.

ACQUIESCENCE.—See WASTE.

ACTION OF EJECTMENT.—See LIMITATIONS, STATUTE OF, 1.

ALIMENTARY FUND.—See TRUST, 2.

AMALGAMATION.—See COMPANY, 1.

ARRESTMENT, See TRUST, 2.

ASSIGNMENT.

1. M., being in debt, assigned all his property to the defendant, and mortgaged some leasehold property to him to enable him to borrow money, all for the purpose of paying off and settling with M.'s creditors, among whom was the plaintiff. The defendant realized large sums from the property, and paid some of the debts, but not the plaintiff's. The plaintiff claimed an account, and that M.'s estate should be administered by the Court, and his and the other debts paid. There was no allegation that plaintiff had had notice of the assignment by M. to the defendant. Demurrer allowed. *Gerard v. Lauderdale* (2 Russ. & My. 45) and *Acton v. Woodgate* (2 My. & K. 492) approved. *Dictum* of KNIGHT BRUCE, V. C., in *Wilding v. Richards* (1 Coll. 655), disallowed. *Johns v. James*, 8 Ch. D. 744.

2. One G. contracted to build the defendant a ship for £1,375, payment to be made in instalments. G. was short of means, and the defendant made advances to him to enable him to continue the work, so that on October 27, when, by the contract, G. should have been paid only £500, he had been advanced £1,015. On that date G. gave an order to the plaintiff, to whom he owed a large sum, upon the defendant, to pay the plaintiff £100 out of the money "due or to become due" from the defendant to G. The plaintiff gave due notice of this order to the defendant; and the latter acknowledged it, but refused to be bound by it, and continued to make advances to G. up to the full contract price. Without these advances, G. would have been unable to complete his contract with the defendant. The Judi-