objected that the costs of administering the realty should have been paid exclusively out of the proceeds of the realty, in which case there would have been a substantial sum of pure personalty left for the charity. Kay, J., considered that the order on further consideration had concluded the question how the costs were to be borne, and ordered payment to the heir. Fry, L.J., agreed with Kay, J., but the other members of the Court of Appeal (Cotton and Bowen, L.JJ.) considered that the Attorney-General's contention was correct as to the mode in which the costs should be paid, and that the order on further consideration, containing no declaration as to the ultimate incidence of the costs, nor any indication of any intention to decide that question, must be treated as having directed the payment of costs generally out of the fund, merely for convenience, and not with any intention of altering the rights of the parties, and was, therefore, no obstacle to the court now setting the matter right, as the fund was still under its control.

LEGACY TO CHARITY—PURE PERSONALTY—MUNICIPAL BONDS—MORTMAIN—9 GEO. 2, C. 36, S. 3.

In re Thompson, Bedford v. *Teal*, 45 Chy.D., 161, though turning to a large extent on the effect of certain Imperial Statutes, may nevertheless be referred to as furnishing the latest views of the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.) on the much-debated question as to what constitutes an interest in land within the Mortmain Act, 9 Geo. 2, c. 36, s. 3, out of which legacies to charities can not properly be paid. The fund in question in this case was secured by municipal bonds, which were made a charge on the surplus which might remain of the Borough fund after making certain payments. The Borough fund was partly derived from rents of land. The Court of Appeal held (overruling Stirling, J.) that the bonds in question did not give an interest in land within the meaning of 9 Geo. 2, c. 36. A statute provided that the proceeds of the sale of any surplus lands were also to be carried to the Borough fund; but as it was not shown that there were any surplus lands, the court held that the debentures, which were a charge on the fund, must be treated as pure personalty. It is by no means clear, even if it had been shown that there were surplus lands, that that would have made any difference. In the course of the argument, Fry, L.J., propounded the following question: "Suppose you place a tub under your apple tree, and give a charge upon such apples as fall into it, is that an interest in land?" to which the learned counsel replied, "Yes, because the apples being now on the tree are part of the land." Whether that is a satisfactory answer to the question, we must leave our readers to judge.

POWER OF APPOINTMENT—REAL ESTATE—INVALID EXECUTION OF POWER—POWER TO APPOINT IN TAIL DOES NOR WARRANT APPOINTMENT FOR LIFE.

In re Porter, Porter v. *Dequetteville*, 45 Chy.D., 179, the validity of an assumed exercise of a power of appointment was called in question. The facts were that a husband and wife, having a general power of appointment, over real estate under a deed dated 5th September, 1837, by a deed dated the 9th September, 1837, exercised that power by appointing to themselves successively for life, with remainder to such of their children in tail, and in such manner as they should