

tion at the time fixed for completion to give what was bargained for, this was an answer to the plaintiff's claim either for specific performance, or for damages for breach of contract; notwithstanding that, after the defendant had repudiated the contract on this ground, the plaintiff had, before action, got in the outstanding right to the mines, minerals, etc. This case deserves consideration in connection with *Paisley v. Wills*, 19 Ont. 303, recently affirmed by the Court of Appeal.

INVESTMENT OF TRUST FUNDS—INSTRUMENT GIVING NO POWER TO VARY INVESTMENTS—POWER TO VARY EXISTING SECURITIES—TRUST INVESTMENT ACT (54 & 55 VICT. C. 32) s. 3—(R.S.O., c. 110, ss. 29, 30.)

*In re Dick, Lopes v. Hume-Dick* (1891), 1 Ch. 423, the Court of Appeal (Lindley, Fry, and Kay, L.JJ.) refused to follow *In re Manchester Royal Infirmary*, 43 Chy. D. 420 (noted *ante* vol. 26, p. 264), and held that where trustees hold securities under an instrument giving them no power to vary investments, they nevertheless have power to sell such securities and reinvest the proceeds in securities authorized by the Trust Investment Act (see R.S.O., c. 110, ss. 29, 30).

COMPANY—WINDING UP—RECEIVER APPOINTED IN ACTION BY DEBENTURE-HOLDER—SUPERSEDING RECEIVER BY LIQUIDATOR.

*In re Stubbs, Barney v. Stubbs* (1891), 1 Ch. 475, the Court of Appeal (Lindley and Kay, L.JJ.) refused to interfere with the discretion exercised by Kekewich, J., (see *ante* p. 137) in refusing to displace a receiver of a company appointed in an action by debenture-holders in favor of the liquidator of the company, which had been ordered to be wound up. In such a case, where the receiver has been appointed by the Court, there is a discretion as to who shall be the receiver, though it is otherwise where the debenture-holders have themselves appointed a receiver in pursuance of a power so to do. In the present case there was practically nothing for the liquidator to do, except get in a sum of £180 from the shareholders for uncalled capital.

PRACTICE—TRIAL BY JURY—ORD. XXXVI., R. 6, 7 (ONT. JUD. ACT, s. 77).

*Jenkins v. Bushby* (1891), 1 Ch. 484, was an action brought by one mine-owner against another to restrain trespass and for an account of the minerals which had been taken by defendant from the plaintiff's land. The case turned on the question whether the *locus in quo* was part of the plaintiff's estate, or part of the waste of the manor. The plaintiff applied for a trial by a special jury. Stirling, J., refused the application for a jury on the ground that the case would involve the examination of many documents; but on appeal his order was reversed. The Court (Lindley, Lopes and Kay, L.JJ.) thought the importance of a view was so great that a trial by jury ought to be ordered.

WINDING UP—STAYING PROCEEDINGS IN AN ACTION AGAINST THE COMPANY—PRACTICE.

*In re General Service Co-operative Stores* (1891), 1 Ch. 496, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), affirming Kekewich, J., held that notwithstanding the jurisdiction regarding the winding up of companies under the