exclusively to his English property, and the other exclusively to his property in Switzerland and Italy. Probate was granted of the English will alone on a copy of the other will being filed.

COMPANY—WINDING UP—EXAMINATION OF WITNESS—COMPANIES ACT, 1862 (25 & 26 VICT., C. 89), S. 115—(R.S.C., C. 129, S. 81.)

In re North Australian Territory Co., 45 Chy.D., 87, the liquidator of a company being wound up had, with the leave of the Court, brought an action against another company, and had in the action endeavored to obtain discovery of certain documents in the possession of the defendant company, which the Court refused on the ground that no defence having being put in, the application for the discovery was premature. The liquidator, in order to evade the effect of this decision, then obtained an order for the secretary of the defendant company to be examined as a witness in the winding-up proceedings under s. 115 of the Companies Act, 1882 (R.S.C., c. 129, s. 81); the secretary did not appeal from this order, but on appearing for examination refused to answer a question relating to the matter in issue in the action. Upon this the liquidator moved to compel him to attend again at his own expense and answer the questions, but inasmuch as he failed to show any reason for seeking the discovery except to aid him in the action, and so to evade the order postponing discovery in the action, the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.), reversing the order of Kekewich, J., held that the witness was justified in refusing to answer the questions. The rule, therefore, which may be deduced from this case seems to be this, that when an action has been brought by a liquidator of a company being wound up he must confine himself to the proper procedure in that action for the purpose of getting discovery, and cannot resort to the provisions of R.S.C., c. 129, s. 81, to get indirectly what he could not get directly in the action. At the same time it must be remembered that this is not a hard and fast rule, but one that may be relaxed if justice requires it.

PRACTICE—FURTHER CONSIDERATION—ORDER TO PAY COSTS OUT OF FUND IN COURT—SUBSEQUENT APPLICATION TO APPORTION COSTS AGAINST REALTY AND PERSONALTY.

In re Roper, Taylor v. *Bland*, 45 Chy.D., 126, a question of practice of some importance came before the Court of Appeal, from Kay, J. A testatrix bequeathed a mixed fund of pure personalty and money to arise from realty directed by her will to be sold to her sisters for life and then to a charity. This was a suit to administer the estate, and on further consideration (or as we should say here, on further directions), the costs of suit and certain legacies were ordered to be paid out of a fund in court (part of which arose from realty and part from pure personalty), so far as it would extend, and the deficiency to be raised out of a sum of stock in court which represented realty. There was no reservation of any subsequent further consideration, nor of the question how the costs should be ultimately borne. The dividends on the residue of the stock were ordered to be paid to one of the parties for life, with liberty to apply on the death of the tenant for life. The testatrix's heir-at-law applied for payment out of the fund to him as being realty; but the Attorney-General, for the charity,