

RECENT ENGLISH DECISIONS.

J., granted the application, but the Court of Appeal, finding on the evidence that the word "Gem," at the time of the application for registration, had become descriptive of a particular make of air guns, and not of the guns of the applicant exclusively, reversed the decision of Kay, J. Lindley, L.J., doubted whether the word "Gem" could in any case be registered as a trade-mark.

PRACTICE—COSTS—STAYING PROCEEDINGS FOR NON PAYMENT OF COSTS.

In re Wickham, Marony v. Taylor, 35 Chy. D. 272, a question which has once or twice recently been before our own court was considered by the Court of Appeal, and that is the power of the court to stay proceedings for non-payment of costs. It may be remembered that the Court of Chancery was accustomed to make such orders on the ground that the party making default was in contempt, and was not at liberty to take any proceedings against his opponent until the contempt was cleared. The Court of Appeal, however, have placed the jurisdiction to stay proceedings on a more reasonable footing, which may be gathered from the following passage from the judgment of Lindley, L.J., at p. 282:

I agree that the non-payment of costs *per se* is not ground for staying proceedings, but there is a great distinction even now between actions, the costs of which come out of the estate, and ordinary actions in the Queen's Bench Division. It appears to me that under the present practice, whenever it can be shown that a person is proceeding vexatiously in not paying costs which he has been ordered to pay, the court has jurisdiction to stay the proceedings. This rule is, I think, applicable in all the Divisions of the Court.

PRACTICE—INFRINGEMENT INT.—PARTICULARS OF OBJECTION TO PATENT.

Crompton v. Anglo-American Brush Electric Light Co., 35 Chy. D. 283, was an action for the infringement of a patent. The defendant, by his statement of defence, denied the validity of the patent, and stated that the specification did not sufficiently describe the invention, and how it was to be performed. Further particulars having been ordered, the defendant repeated the objection, with the addition that the specification did not contain a sufficient direction to enable skilled workmen to make a machine having the advantages alleged by the inventor. Kay, J., having ordered further particulars, the Court of Ap-

peal affirmed his order on the ground that if the defendant knew of a particular defect in the specification he ought to point it out, so that the plaintiff might not be taken by surprise.

PRACTICE—THIRD PARTY—DISCOVERY, RIGHT OF THIRD PARTY TO.

In *Eden v. Weardale Iron Co.*, 35 Chy. 287, the Court of Appeal reversed the judgment of Kay, J., on a point of practice. A third party had been notified by the defendant for the purpose of claiming indemnity against him, and an order had been made directing that the question of indemnity should be tried after the trial of the action, and that the third party should be at liberty to appear at the trial of the action, and oppose the plaintiff's claim so far as he was affected thereby, and for that purpose to put in evidence and cross-examine witnesses. Before the trial the third party applied to examine the plaintiff for discovery. Kay, J., conceiving himself bound by authority, refused the application, on the ground that the third party was not in the position of a defendant, although expressing a strong opinion that, but for the cases he referred to, the third party was entitled to discovery. The Court of Appeal overruled Kay, J., and granted the order.

ADMINISTRATION ACTION—REAL ESTATE—*LIS PENDENS*—PURCHASER *PENDENTE LITE*.

In *Price v. Price*, 35 Chy. D. 297, the doctrine of *lis pendens* is considered and discussed by Kay, J. The action was brought on 30th Dec., 1875, by one of two trustees of a marriage settlement against James Price and Nicholas Price as executors of their father, a deceased trustee, claiming payment by them of the trust fund of £1,000 alleged to have been received, and improperly retained, by their testator. The testator died in 1873, and by his will he specifically devised parts of his real estate to them respectively. The original statement of claim delivered on 2nd March, 1876, stated that the testator had received the £1,000, and claimed payment, but did not ask for administration. On 11th May, 1878, the plaintiff registered the action as a *lis pendens* against both defendants. On 26th March, 1879, an amended statement of claim was delivered, asking, in addition to the relief