

RECENT ENGLISH DECISIONS.

penses attending the execution of works authorized by the Act. (5) In repaying moneys due which had been or should be borrowed under the Act or any repealed act, was or was not pure personalty. Chitty, J. held that it was an interest in and affecting land, and therefore, within the meaning of the Mortmain Act, 9 Geo. II., c. 36; but the Court of Appeal reversed this decision, and in doing so distinguished the case from *Attorney-General v. Jones*, 1 Mac. & G. 574, threw doubt on the authority of *Knapp v. Williams*, 4 Ves. 430, etc., and refused to follow *Ion v. Ashton*, 28 Beav. 379.

TRUSTEE—INVESTMENT—HAZARDOUS SECURITY—CESTUI QUE TRUST—LIEN.

In *re Whiteley*, *Whiteley v. Learoyd*, 33 Chy. D. 347, the Court of Appeal affirmed the decision of Bacon, V.-C., noted *ante* p. 253. The court further decided that a *cestui que trust*, who has been paid the extra income secured by the investment of the trust funds in a hazardous security which ultimately proves inefficient, cannot be compelled to refund to the trustee the excess of income thus obtained. The court also held that where a trustee has been ordered to replace a trust fund which has been invested on an insufficient security, the *cestui que trust* is entitled to a lien on the security until the fund is replaced.

TRADE MARK.

In *re James's Trade Mark*, *James v. Soulby*, 33 Chy. D. 392. The plaintiff, in 1861, registered a design for the shape of blocks of black lead, being a cylinder terminated by a dome at one end as a trade mark, and the question the Court of Appeal had to decide was whether Mr. Justice Pearson was right in saying that such a design could not be registered as a trade mark. This question they answered in the negative.

INFANT—MAINTENANCE—CHARGE ON INFANTS' ESTATE IN REMAINDER.

Cadman v. Cadman, 33 Chy. D. 397, was an application to raise money on infants' estates for their past and future maintenance. The infants, five in number, were entitled to successive estates tail in remainder expectant on the death of their grandmother, who was tenant for life, and there being no income available for their maintenance, the grandmother offered to release her life estate in a

portion of the property so as to give the first tenant in tail an estate in possession for the purpose of raising money thereon, for the past and future support of himself and the other infants, but this the Court of Appeal refused to sanction.

LUNACY OF ONE OF SEVERAL MORTGAGEES—TRUSTEE ACT, 1850, s. 3.

In *re Jones*, 33 Chy. D. 414, the Court of Appeal determined that when one of two mortgagees (who were also trustees) had become lunatic, and a new trustee had been appointed in his place under a power, the Court had jurisdiction under the Trustee Act, 1850, to appoint a person to convey the interest of the trustee of unsound mind in the mortgage which formed part of the trust estate, for the purpose of vesting the mortgaged estate in the continuing trustee and the new trustee.

TRUSTEE ACT, 1850—NEW TRUSTEE—VESTING ORDER.

The Court of Appeal, following its decision in *Re Vicat*, 33 Chy. D. 103 (see *ante* p. 397), refused in *Re Dewhirst*, 33 Chy. D. 416, to reappoint a new trustee already validly appointed under a power, in order to vest the trust estate in the continuing trustees and the new trustee. *Re Dalgleish*, 4 Chy. D. 143, which was not cited in *Re Vicat*, was relied on by the applicants but was overruled.

EASEMENT—LEASE—MERGER.

In *Dynevor v. Tennant*, 33 Chy. D. 420, the Court of Appeal affirmed the decision of Pearson, J., 32 Chy. D. 375, noted *ante* p. 301.

PRACTICE—FOREIGN CORPORATION—SERVICE OF WRIT.

In *L'Honeux v. Hong Kong Banking Corporation*, 33 Chy. D. 446, the defendants applied to set aside service of a writ of summons. They were a foreign bank doing business in London, and the writ had been served on the head manager of the London agency of the bank. This was held by Bacon, V.-C., to be good service on the defendants, and he also held that the fact that the defendants had applied for security for costs was a waiver of any objection as to service of the writ.

CHARITY—CY-PRES—FAILURE OF OBJECT—LAPSE OF LEGACY.

In *re White's Trusts*, 33 Chy. D. 449, a testator who died in 1853 had bequeathed £1,000, after the death of a tenant for life, to the master and wardens of the Tinplate Workers