

## RECENT ENGLISH DECISIONS.

SURVIVING PARTNER—MORTGAGE OF ASSETS FOR  
PAST DEBT.

The question before North, J., in *re Clough, Bradford Commercial Banking Co. v. Cure*, 31 Chy. D. 324, was the simple one, whether a surviving partner has power to mortgage the assets of the partnership to secure a debt of the firm. The learned judge held that he has. He says, at p. 327:—

It is clear that the surviving partner could have paid off, out of the assets of the firm, any existing debt, and therefore he could equally well satisfy any creditor by giving security upon a part of the assets.

## PROMOTER OF COMPANY—AGENT—SECRET COMMISSION.

*Lydney and Wigpool Iron Co. v. Bird*, 31 Chy. D. 328, was an action in which the principle established in the celebrated case of *Emma Silver Mining Co. v. Grant*, 11 Chy. D. 118, was sought to be invoked. The defendants were employed by the vendors to form and launch a company to purchase some mines belonging to the vendors; and it was agreed between them that the defendants should receive a commission of £10,800 out of the purchase money of £100,000. The defendants undertook all the business connected with the issuing of the prospectus and bringing out of the company. They subscribed the articles of association, and guaranteed the subscription of the shares offered to the public. The company was formed, and the commission paid by the vendors to the defendants; but the payment of the commission was not made known to the company. On its being discovered, the company brought the present action to compel the defendants to refund it. But on the evidence Pearson, J., held that the defendants could not be deemed to be promoters, but that they were merely agents for the vendors, and that the purchase money had not been increased for the purpose of providing for the payment of the commission, and therefore that the defendants were not liable. In the agreement for sale of the mines, entered into by the vendors with a trustee for the intended company, a stipulation was inserted that the company should employ the defendants to conduct the sales of the company's ores at a commission; which arrangement was to continue until good cause should be shown to the contrary, and this agreement was adopted by

the company on its formation. But it was held that the interest which this arrangement gave the defendants was not sufficient to constitute them promoters, and the action was therefore dismissed.

VENDOR AND PURCHASER—FAILURE OF VENDOR TO SHOW  
TITLE.

In *re Yielding and Westbrook*, 31 Chy. D. 344, was an application under the Vendor and Purchaser's Act, R. S. O. c. 109, s. 3. The vendor had failed to prove title, and the application was made to compel him to refund the deposit with interest, and to pay the costs of investigating the title, and of the application. Pearson, J., made the order asked, and made the costs a charge on the vendor's interest in the property.

## SOLICITOR—NEGLECT—SUMMARY JURISDICTION.

The only remaining case in the Chancery Division is *Batten v. Wedgwood Coal Co.*, 31 Chy. D. 346, in which it was held by Pearson, J., that a plaintiff's solicitor, who had obtained an order directing certain purchase money to be paid into Court and invested in consols, was guilty of negligence in omitting to take the necessary steps to have the investment made as provided by the order, and was liable to make good to the person entitled to the money the loss occasioned by his omission to get it invested, and that this liability might be enforced by summons in the action.

## EVIDENCE—LEGITIMACY.

Turning now to the Appeal Cases for March, the first calling for attention is *The Aylesford Peerage*, 11 App. Cas. 1, in which the only point of interest decided by the Lords is that although a mother cannot be heard as a witness to bastardise her own offspring born in wedlock, yet statements made by her *ante litem motam* as to its paternity are admissible, not as proof of its illegitimacy but as evidence of conduct.

## COMPANY—TRANSFER OF SHARES—PRIORITY.

*The Societe Generale v. Walker*, 11 App. Cas. 61, is a decision of the House of Lords on a question of some importance. M., the owner of shares in a company, deposited with S. certificates of the shares and a blank transfer as security for a debt. Afterwards he fraudulently exe-