

RECENT ENGLISH DECISIONS.

delivered a course of lectures to his class; a student attending the class had taken short-hand notes of the lectures which the defendant published. The present action was brought to restrain the publication. Considerable difference of opinion appears to have prevailed among the Scotch judges, as to whether the delivery of the lectures was not such a publication of them as to deprive the plaintiff of any right of property therein. Six of them held that he had still a right of property in them, while five held that he had not, and two others, that even if he had, the defendant was not interfering with it. The House of Lords, however, determined that the delivering of the lectures was not equivalent to publication, and that the appellant was entitled to restrain the defendant from publishing them. From this decision, however, Lord Fitzgerald dissented, considering that the plaintiff occupied a public position, and that his lectures as soon as delivered became public property.

BONUS DIVIDEND—CAPITAL OR INCOME—TENANT FOR LIFE AND REMAINDERMAN.

Bouch v. Sproule, 12 App. Cas. 385, is the finale of a case noted ante vol. 21, p. 331, as *In re Bouch, Sproule v. Bouch*. The point in controversy arose between a tenant for life and remainderman as to whether certain bonus dividends and new shares purchased therewith, were to be regarded as income or accretions of capital. Kay, J. decided they were capital, and the Court of Appeal reversed his decision, and now the House of Lords have reversed the Court of Appeal and restored the judgment of Kay, J. The principle deducible from this case appears to be this, that where a company having no power to add to its capital declares a dividend out of surplus profits, such dividend must be deemed income; but where the company has power to increase its capital, and a bonus dividend is declared as a part of a scheme for effecting such increase, then the bonus must be regarded as capital.

LIMITED COMPANY—COMPANY PURCHASING ITS OWN SHARES—ULTRA VIRES.

In *Trevor v. Whitworth*, 12 App. Cas. 409, the House of Lords also reversed a decision of the Court of Appeal. A limited company incorporated under the Joint Stock Companies Acts with the objects (as stated in its memorandum) of acquiring and carrying on a manu-

facturing business, and any other businesses and transactions which the company might consider in any way conducive or auxiliary thereto, or in any way connected therewith. The articles authorized the company to purchase its own shares. The company having gone into liquidation, a former shareholder made a claim against the company for the balance of the price of his shares sold by him to the company before the liquidation and, not wholly paid for. But the House of Lords (reversing the Court of Appeal, and disapproving of the reasoning of that court *In re Drayfield Silkstone Coal Co.*, 17 Chy. D. 76) held that such a company had no power under the Companies Acts to purchase its own shares, that the purchase was *ultra vires* and the claim must fail.

QUEENSLAND CONSTITUTION ACT, 1867, ss. 23, 24—SEAT IN COUNCIL VACATED (B. N. A. ACT, s. 31, ss. 1.)

Attorney-General v. Gibbon, 12 App. Cas. 442, is an adjudication by the Privy Council upon the construction of the Queensland Constitution Act of 1867, which provides that if any legislative councillor shall for two successive sessions fail to give his attendance, without permission, his seat shall thereby become vacant. The respondent, who was a councillor, absented himself during the whole of three sessions, having previously obtained permission for a year, which period of time, in the event, covered the whole of the first and part of the second session. Their lordships held that the seat was vacated, and that the permission did not cover two successive sessions.

TRADE MARK—RIGHT TO EXCLUSIVE USER—INFRINGEMENT.

In *Somerville v. Schembri*, 12 App. Cas. 453, the Judicial Committee of the Privy Council on an appeal from the Court of Appeal of Malta, held that by the general principles of commercial law, as soon as a trade mark has been so employed in the market as to indicate to purchasers that the goods to which it is attached are the manufacture of a particular firm, it becomes to that extent the property of that firm, and its infringement by others may be restrained. Thus in the case in hand, the appellant's firm were makers of cigarettes, which became favourably known under the trade mark "Kaisar-i-Hind," and it was held that the use of that trade mark by others for