

RECENT ENGLISH DECISIONS.

Imp. 15-16 Vict. c. 86., sect. 44 (R. S. O. c. 49, sect. 9.) On appeal, the Court of Appeal held that he was right, and that the Court had jurisdiction to make the order, although it was agreed that the section was inapplicable to a case where there is a contest between the estate and claimant. Baggally, L. J., said:—"Here the case is clearly within the section. The deceased person was interested. He was insured in the office and is dead, and has no legal personal representative. It is clearly a case where a judge might, if he thought fit, dispense with the presence of a legal personal representative. But it is said, that in many instances the Court has not thought fit so to intervene. In every case cited for that purpose the Court went on the special circumstances of the case then before it. In some there were proceedings actually pending with reference to the appointment of a legal personal representative, in some litigation with reference to this very point, and there the Court has not thought fit to dispense with the appearance of the legal personal representative. Then again there were other cases of such a character, that duties had to be performed by the legal personal representative, and therefore the Court did not act on the powers conferred on it; and if any of the cases cited is looked into, it will be seen that it turns upon its own special circumstances."

PARTNERSHIP—DISSOLUTION—GOODWILL.

Leggott v. Barnett, p. 90, is an interesting case on the subject of goodwill. There had been a deed of dissolution of partnership executed, by which the defendant assigned and transferred to the plaintiff all his individual share in the stock-in-trade and effects of and belonging to the late partnership business. Nevertheless the defendant, after this dissolution, sent out circulars to the customers of his old firm soliciting their custom, and there was evidence that several of such old customers had commenced dealing with him. The plaintiff, therefore,

brought an action against him for an injunction to restrain him, not only from soliciting the old customers, but also relying on a *dictum* of the M. R. in *Ginesi v. Cooper*, L. R. 14 Ch. D. 596, from actually dealing with such customers. The M. R. granted an injunction as asked. The defendant did not dispute the first part of the injunction, and only appealed as to the second part. Some of the judges of the Court of Appeal, however, take occasion to express opinions in favour of the first part of the injunction. Thus Brett, L. J., says:—"The mere fact of the other going out of the partnership, if nothing else was stated, left the goodwill in the other partner. * * * It being a deed dissolving a partnership, it follows that the goodwill is left to the partner who retains the business. * * * And I should say, where there is a dissolution of partnership for valuable consideration, that the outgoing partner who dissolves the partnership for good consideration, does impliedly contract that he will not immediately afterwards do away with that for which he has been paid by soliciting the customers, and so practically destroying the goodwill which he has agreed to leave with the surviving partner."

But the question really before the Court on the Appeal, was whether there was anything that would justify the Court in construing a sale of goodwill as an implied contract not to deal with any customers of the old business, the goodwill of which was sold. The Court held, unanimously, that there was not. Thus Cotton, L. J., says:—"No case has ever laid down, that a man who has sold his goodwill, although he set up a shop next door, was not justified in dealing with the customers of the old firm whom he did not solicit to come there. In *Churton v. Douglas*, John 174 the judgment of the V. C. quite concurs, I think, with the previous decisions, in assuming that the defendant might, if he thought fit, have carried on business with the customers of the old firm, provided that he did not represent to them that his was the