

RECENT ENGLISH DECISIONS.

the instalments of principal and interest remaining unpaid by each mortgagor. Upon this footing the directors paid for several years out of the floating capital from time to time in their hands, (1) dividends of $7\frac{1}{2}$ per cent. and upwards; (2) remuneration to themselves. But it was held by Kay, J., that "realized profits" must be taken to mean profits tangible for the purpose of division, and that the directors having treated estimated profits as realized profits, and having in fact paid dividends out of capital on the chance that sufficient profits might be made, which was not the case, were jointly and severally liable, as upon a breach of trust, to repay, and must repay, the sums improperly paid as dividends, and also the remuneration they had respectively received, with interest in each case, at 4 per cent.

The directors having also, without the knowledge of the shareholders, voted and paid themselves out of the funds of the company a commission on certain purchases and sales, and entered such payment in the books of the company, but made no mention of it in their reports or balance sheet, they were held jointly and severally liable to repay this amount, with interest at 5 per cent.

LEASE—LESSOR AND LESSEE—TRUSTEE—POWER OF LEASING—COVENANT FOR RENEWAL—BEST RENT—SPECIFIC PERFORMANCE.

The case of *Gas Light and Coke Co. v. Towse*, 35 Chy. D. 519, was an action for specific performance of a covenant for renewal of a lease. The lease containing the covenant had been executed by trustees under a private Act of 1828, whereby the trustees were empowered to grant building leases in possession not exceeding seventy-five years at "the best yearly rent." The lease was sanctioned by the court in the presence of the beneficiaries, and was for thirty years at a yearly rent of £30, the lessors covenanting to renew at the end of the term for a similar term, at the like rent. At the expiration of the term, the value of the property had very largely increased, so that the original rent was not now "the best rent" and the lessors therefore declined to renew. It was held by Kay, J., that the covenant was not *ultra vires*, and if the original rent had now been "the best rent" it might have been enforced; but that specific performance of it could not now be enforced, as the original rent was not now the best rent; and that the

lessees could not recover damages for a breach of covenant arising from infirmity of title. On the last point the learned Judge rests his decision on the cases of *Florian v. Thornhill*, 2 W. Bl. 1078, and *Bain v. Fothergill*, L. R. 7 H. L. 158.

MORTGAGEE—SALE UNDER POWER—SURPLUS PROCEEDS—AMOUNT UNDERSTATED BY MORTGAGEE—INTEREST—COSTS.

Charles v. Jones, 35 Chy. D. 544, was an action against a mortgagee who had sold under a power of sale, for an account; the defendant admitted that a sum was due from him, which he paid into court. On the taking of the accounts a much larger sum was found due,—and it was held by Kay, J., that he was bound to pay interest on the sum found due, and was not entitled to his costs of taking the accounts.

WILL—CONSTRUCTION—ILLEGITIMATE CHILD DESCRIBED AS "NEPHEW" OF TESTATOR.

In re Hall, Branstons v. Weightman, 35 Chy. D. 551, is a decision of Kay, J., upon the construction of a will wherein the testator described R. W., who was illegitimate, and another person who was legitimate, as "my two nephews." He gave his residuary estate upon trust for the children of his brothers, E. H. and T. H., and of his sister, J. W., and his late sister, J. B., in equal shares with a gift over if any one or more of his "nephews and nieces" should die before him leaving children. R. W. was the illegitimate child of J. W., who had four legitimate children. It was held that the fact that the testator had described R. W. as "nephew" was not sufficient to entitle him to share under the gift to the children of J. W.

WILL—CONSTRUCTION—"CHILDREN" HELD TO MEAN GRANDCHILDREN.

In re Smith, Lord v. Hayward, 35 Chy. D. 558, is another decision of Kay, J., upon the construction of a will. In this case the testator gave his residuary estate to trustees in trust for sale and to divide the proceeds in six shares, and to pay one of such shares to the "children" of his deceased sister, and he gave the other five shares in similar terms to the children of five deceased persons. At the date of the will there were no children of the sister living, but there were two grandchildren, and these facts were well known to the testator. Both the grandchildren survived the testator and it was held by Kay, J., that