

## RECENT ENGLISH DECISIONS.

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THE March number of the *Law Reports*, consist of 9 App. Cas. p. 1-186; 25 Ch. D. p. 243-471; 12 Q. B. D. p. 141-207; 9 P. D. p. 25-33.

## TRUSTEES—LIABILITIES FOR TRUST MONEY LOST THROUGH BROKERS.

The first case in the first of these is *Speight v. Gaunt*, an appeal from the decision of the Court of Appeal, reported 22 Ch. D. 727. The question was whether a trustee who, being authorized to invest the trust moneys in municipal securities, employed a broker to make such investments, and on receiving a bought-note, gave cheques for the purchase money to the broker on his request, was liable to the *cestuis que trustent*, the broker having absconded with the money, no stocks or securities having been in fact purchased by him. The House of Lords now held the trustee was not liable, the evidence showing that he had followed the usual and regular course of business adopted by ordinary business men in making such investments. The case shows, in the words of Lord Fitzgerald at p. 29, that, "although a trustee cannot delegate to others the confidence reposed in himself, nevertheless he may in the administration of the trust fund avail himself of the agency of third parties, such as bankers, brokers, and others, if he does so from a moral necessity, or in the regular course of business. If a loss to the trust fund should be occasioned thereby, the trustee will be exonerated unless some negligence or default of his has led to that result," and he adds: "looking at the trust before us and the intended investment of the trust fund, I concur in thinking that the trustee was entitled to employ a broker, and not the less entitled to do so even if he could have obtained the securities direct from the corporations without the intervention of a broker."

## • DISCOVERY—INTERROGATORIES—PRIVILEGED COMMUNICATIONS.

At p. 81, is the case of *Lyell v. Kennedy*, which is entitled No. 2, to distinguish it from the case of *Lyell v. Kennedy*, reported L. R. 8 App. Cas. 217, in which the right to discovery in actions of ejectment was established. The present case also bears on the subject of discovery. In answer to certain interrogatories administered by the plaintiff, as to the defendants information, knowledge, and belief in certain matters, the defendant gave, as Lord Watson says, at p. 89, in substance the following reply: "I have no personal knowledge, but I have certain information derived from communications oral or written with my solicitor, and I have no other information or means of forming a belief." The House of Lords held that this was a sufficient answer, for that since under such circumstances the defendant's knowledge and information were protected, so also was his belief when derived solely from such communications of his solicitor. It was agreed that the object of discovery is to ascertain the state not merely of the party's consciousness, but of his conscience, and that it is permitted to search the conscience of the party by inquiring as to his information and belief from whencesoever derived. As said by Lord Watson, at p. 92: "in this case the proposition which appears to be maintained is this, that you cannot get the brief which was handed to him (the party interrogated), but that you can get the opinion which he formed." The point is mentioned as a new one. Lord Watson observes: "I think it quite impossible to separate belief in the mind of a client and litigant, which is derived from such materials as information from his agent (it may be a written memorial, it may be partly advice and council) from the information itself. I cannot see upon what principle he can be called upon to state that belief, whilst at