

RECENT ENGLISH DECISIONS.

a six months' notice, and thereby the lessor covenanted to rebuild the premises after the expiration of the first four years. Before the expiration of the first four years the lessor frequently told the lessee that he would be unable to procure the money for rebuilding; and in consequence of this statement the lessee gave notice to terminate the lease at the expiration of the four years. After the determination of the lease the lessee continued in possession, paying rent to the lessor's mortgagees, on the chance, as he stated, of the lessor's procuring the money to rebuild. The lessor, however, being unable to rebuild, the lessee now claimed damages for breach of the contract to do so. But the Court of Appeal held that the lease having been terminated before the time fixed for the performance of the contract to rebuild, there had been no breach of it, unless it could be said that there had been an anticipatory breach of it within the doctrine laid down in *Hochester v. De la Tour*, 2 E. & B. 678, and *Frost v. Knight*, L. R. 7, Ex. 111, by reason of a wrongful repudiation of the contract before the time for performance; but they held that what the lessor had said as to his inability to raise the money to rebuild could not be considered such a repudiation, and the counter claim was therefore dismissed.

PENAL ACTION—DISCOVERY.

In *Martin v. Treacher*, 16 Q. B. D. 507, the Court of Appeal (affirming the Court below) held that the general rule is, that in an action for penalties by a common informer leave will not be given to the plaintiff to administer interrogatories for the purpose of discovery.

DISENTAILING DEED—RECTIFICATION OF MISTAKE.

Proceeding now to the cases in the Chancery Division the first to be noticed is *Hall-Dare v. Hall-Dare*, 31 Chy. D. 251, which is a decision of the Court of Appeal overruling the judgment of Bacon, V.C., in 29 Chy. D. 133, which we noted *ante*, vol. 21 p. 267. The Court of Appeal taking the more liberal view that a mistake in a settlement might be rectified although included in a disentailing deed, notwithstanding the provisions of 3 & 4 Wm. IV. c. 74 s. 47 (R. S. O. c. 100, s. 96.)

SETTLEMENT—ELECTION AGAINST VOIDABLE COVENANT—COMPENSATION TO THOSE DISAPPOINTED.

The Court of Appeal, in *In re Vardon's Trusts*, 31 Chy. D. 275, have reversed the decision of Kay, J. (28 Chy. D. 124), which we noted *ante*, vol. 21, p. 129. A married woman at the time of her marriage, being then an infant, executed a settlement containing a covenant on her part to settle after-acquired property. Under the settlement she was entitled to the income of a fund, subject to a restraint against anticipation. Subsequently she became entitled to a legacy which she refused to settle; and Kay, J., held that those who were disappointed by her refusal were entitled to be compensated out of the life estate she was entitled to under the settlement. In arriving at this conclusion he followed a decision of Wood, V. C., in *Willoughby v. Middleton*, 2 J. & H. 344; but the Court of Appeal, finding a conflict of authority on the point, decided the question on principle, and adopted the conclusion of Sir Geo. Jessel in *Smith v. Lucas*, 18 Chy. D. 531, and held that those who were disappointed by the refusal to settle the after-acquired property were not entitled to compensation out of the fund to which the married woman was entitled under the settlement, because the clause against anticipation would in that event be defeated.

GIFT—REVOCATION—TRANSFER OF STOCK INTO JOINT NAMES OF DONOR AND DONEE.

Standing v. Bowring, 31 Chy. D. 282, is a somewhat curious case. The plaintiff, an old lady of eighty-six, desiring to benefit the defendant, who was her god-son, transferred a sum of £6,000 stock into their joint names with the express intention that if he survived her he should have the stock for his own benefit. She had been previously warned that if she made the transfer she could not revoke it. Fearing that the anticipation of wealth would make the defendant less active in the duties of life, she did not inform him of the fact of the transfer having been made. Two years afterwards the old lady married, and shortly afterwards the defendant learned for the first time of the transfer, by the receipt of a letter requiring him to re-transfer the stock to the name of the plaintiff. Having refused to do this, the action was brought, claiming to have it declared that the defendant was trustee for the plaintiff. But the Court of Appeal unani-