

RECENT ENGLISH DECISIONS.

the provisions of the Judicature Act. As to the last point that the equitable doctrine of part performance has not been extended by the Judicature Act, this decision will be found noted among our recent English practice cases. As to the equitable doctrine of part performance, at p. 130, Cotton, L. J., makes some interesting remarks as to what that doctrine really is. He says—"It has been said that the principle of that doctrine is that the Court will not allow one party to a contract to take advantage of part performance of the contract and to permit the other party to change his position, or incur expense or risk under the contract, and then to allege that the contract does not exist; for this would be contrary to conscience. It is true that some *dicta* of judges may be found to support this view, but it is not the real explanation of the doctrine, for if it were, part payment of the purchase money would defeat the operation of the statute. But it is well established, and cannot be denied that the receipt of any sum, however large, by one party under the contract, will not entitle the other to enforce a contract which comes within the 4th sect. What can be more contrary to conscience than that after a man has received a large sum of money in pursuance of a contract, he should allege that it was never entered into? The true ground of the doctrine in equity is that if the Court found a man in occupation of land, or doing such acts with regard to it as would *prima facie* make him liable at law to an action of trespass, the Court would hold that there was strong evidence from the nature of the user of the land that a contract existed, and would therefore allow verbal evidence to be given to show the real circumstances under which possession was taken." But it is a curious thing that at p. 133, Thesiger, L. J., without noticing these remarks of his colleague, says—"I confess that on principle I do not see why a similar doctrine should not be applied to the case of a contract of service, and as the doctrine of equity is based upon the theory that the Court will not allow a

fraud on the part of one party to a contract on the faith of which the other party has altered his position, I do not see why a similar doctrine should not comprehend a contract of service." But that the doctrine of part performance did not comprehend a contract of service all the judges of the Court of Appeal agreed. As to a contract which comes within section 4 of the Statute of Frauds, but does not comply with its provisions being, not void, but only unenforceable, notwithstanding certain *dicta* to the contrary, Lords Justices are also agreed.

The cases in the Probate Division comprise three shipping decisions, which are not of such a nature as to require notice here.

APPOINTMENT OF NEW TRUSTEES.

In the July number of the Chancery Division (23 Ch. D. p. 209—p. 369), *In re Aston*, p. 217, requires a word of notice. In it the practice of the Court where a testator has appointed four trustees in his will, and one is of unsound mind, is declared to be, not to re-appoint the other trustees in the place of themselves and the lunatic trustee, for the purpose of excluding the lunatic trustee from the trust, but to appoint a new trustee in his place.

RESIDUARY ESTATE—VOID BEQUEST.

In the next case of *Blight v. Hartnoll*, p. 218, a testatrix made a will as follows:—"I give to C. H. all my personal property, with the exception of my wharf at L." The bequest of the wharf failed for remoteness. The questions were (1), whether the above was a residuary gift; and (2), whether the wharf fell into the residue. The Court of Appeal decided both cases in the affirmative. As to the first question Jessel, M. R., says—"You may have a residuary bequest in various forms; the same thing may be meant though not expressed in the same words. But, however it is expressed, the effect must be that it is intended to comprise all which is not disposed of by the will. It is not a true residue if there is some part not disposed of by the will to