

(51 & 52 Vict. c. 59) not applying, there was no statutory defence to the claim; neither did they consider that the equitable doctrine against enforcing stale demands could be successfully invoked, having regard to the fact that the action was being brought for the benefit of the creditors of the company, and that no prejudice to the defendants, by loss of evidence or otherwise, was shown to have resulted from the delay, and that the facts on which relief was claimed were undisputed.

CONTRACT—STIFLING PROSECUTION—IMPLIED CONDITION—COSTS—"DISCREDITABLE DEFENCE."

*Jones v. Merionethshire Permanent Building Society* (1892), 1 Ch. 173, we have already referred to, *ante* p. 97. The Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) unanimously affirmed the decision of Vaughan Williams, J. (1891), 2 Ch. 587, noted *ante* vol. 27, p. 491. In our former note it is suggested that the plaintiffs succeeded on the ground of pressure being proved; that was not quite correct. It appears there were cross actions by the company on the notes given by the plaintiffs, which were consolidated with the plaintiffs' action to set aside the notes and to compel their delivery up; and that in the course of the action the plaintiffs paid the amount claimed on the notes in order to get back the securities upon an undertaking of the defendants to refund the money if so ordered; and the Court of Appeal decided in favor of the plaintiffs, not on the ground that pressure had been proved, but that the notes were given upon an illegal agreement not to prosecute, which was a defence to the action on the notes, and therefore, under the consent order above referred to, the plaintiffs were entitled to have the money refunded, though but for that order they would not have been entitled to succeed. The illegal consideration, in short, was a defence to the cross action on the notes, though it would not, in the opinion of the majority of the court, without other evidence of pressure, have sustained the plaintiffs' action for the delivery up of the notes and other securities. We may add that although the Court of Appeal felt compelled on the ground of public policy to give effect to the plaintiffs' defence to the cross action on the notes, it nevertheless declared it to be "discreditable," and refused the plaintiffs any costs of the appeal, though they were successful. We may also observe that though Lindley and Fry, L.JJ., seem to be clear that an agreement not to prosecute is not evidence of pressure, yet Bowen, L.J., on the other hand, expressly declines to commit himself to that proposition.

MORTGAGE—CHOSE IN ACTION—INCUMBRANCE ON TRUST FUND BY CESTUI QUE TRUST—PRIORITY—NOTICE TO ONE OF SEVERAL TRUSTEES—DEATH OF TRUSTEE.

*In re Wyatt, White v. Ellis* (1892), 1 Ch. 188, is a case which illustrates the perils they incur who lend money to *cestuis que trustent* on the security of their beneficial interest in the trust estate. In this case there were two trustees of a will, S. and E. One of the *cestuis que trustent* was a woman who married and executed a marriage settlement, vesting her share in the trustees of the settlement. This settlement was communicated to S., but E. had no notice of it. Afterwards the woman and her husband proposed to mortgage her share. The intending mortgagees inquired of both trustees about incumbrances. S.