

RECENT ENGLISH DECISIONS.

he declined to give an undertaking to abstain from issuing circulars calculated to draw off the customers of the firm. Though refusing to give this undertaking, he offered to undertake not to send circulars omitting to state that the receiver was also manager of the business. This Kay, J., refused to accept, and committed the offender to prison for contempt, and on appeal, the Court of Appeal sustained the decision of Kay, J.

CHARITY—MORTMAIN—CY-PRES.

Biscoe v. Jackson, 35 Chy. D. 460, is an illustration of the application of the doctrine of *cy-pres*. A testator directed his trustees to set apart a sum of money out of his personal estate as might by law be applied to charitable purposes, and apply it in the establishment of a soup kitchen, and cottage hospital, for the parish of Shoreditch, in such manner as not to violate the Mortmain Acts. In a suit to administer the trusts, it having been found impossible to apply the fund in accordance with the directions of the will, as no land, already in Mortmain, could be obtained within the parish of Shoreditch; under these circumstances, the fund was claimed by the next of kin; but Kay, J., held (and his decision was affirmed by the Court of Appeal) that the will shewed a general charitable intention to benefit the poor of the parish of Shoreditch, and that although the particular purpose of the bequest had failed the court would execute the trust *cy-pres*, and a scheme was directed accordingly.

CHARITY—MORTMAIN—INDEFINITE GIFT—INCLUSION OF OBJECTS WHICH ARE NOT CHARITABLE.

In re Douglas, Obert v. Barrow, 35 Chy. D. 472, a testatrix gave legacies to several charities and societies, among others to the "Society for the Protection of Animals Liable to Vexatiousness," and the "Home for Lost Dogs"; and she directed the trustees to apply the residue of that portion of her personal estate which might by law be appropriated by will for such purpose, among such charities, societies and institutions (including or excluding the above-mentioned societies as might be preferred), and in such shares and proportions as Lord Shaftesbury should by writing nominate. It was contended on behalf of the next of kin, that this bequest was void for uncertainty, and because it permitted the application of the fund towards the support of the two societies

above-mentioned, which they claimed were not charitable. But the Court of Appeal (affirming Kay, J.), without determining whether the two societies were charities, upheld the gift, on the ground that the scope of the will shewed that the testatrix referred only to charitable societies and institutions.

PRACTICE—PLEADING—EMBARRASSING AND INCONSISTENT DEFENCES.

In re Morgan, Owen v. Morgan, 35 Chy. D. 492, is an action brought by the representatives of a wife against the executor of the husband in respect of sums of money and stock alleged to have been received by the husband as trustee for the separate use of his wife. The defendants pleaded (1) that the sums had not been received; (2) if received, not as trustee; (3) if received, repayment; (4) alternatively, free gift by wife to husband; (5) alternatively, accord and satisfaction; (6) alternatively set-off; (7) the Statute of Limitations; (8) laches and delay. The plaintiff applied to North, J., to strike out the defences 3, 4, 5 and 6. The learned judge declared that the statement of defence was embarrassing and gave the defendant leave to amend, but on appeal, the Court of Appeal (Lindley and Bowen, LL.J.) discharged the order of North, J., and directed the defendant either to amend, or to give particulars as to the defences objected to, within fourteen days after discovery of documents.

COMPANY—WINDING UP—DIRECTORS, LIABILITY OF—PAYMENT OF DIVIDENDS OUT OF CAPITAL—DIRECTORS REMUNERATION.

In re Oxford Benefit Building Society, 35 Chy. D. 502, was an application by a creditor to compel directors of a limited company in process of being wound up, to make good sums alleged to have been misapplied by them. By the articles of association of the company it was provided that no dividends should be paid except out of "realized profits," and that no remuneration should be paid to the directors, until a dividend of 7 per cent. had been paid to the shareholders. The business of the company consisted principally of lending money to builders on mortgages payable by instalments; and the directors treated as part of the profits available for dividends the value for the time being (upon an estimate made by a surveyor, who was also their secretary) of