

REVIEW OF CURRENT ENGLISH CASES.

BREACH OF TRUST—BANK ACCOUNT—PAYMENT OF TRUST MONEY INTO PRIVATE ACCOUNT—PAYMENTS OUT—BALANCE AT CREDIT OF ACCOUNT LESS THAN TRUST FUND—SUBSEQUENT INCREASE OF BALANCE—FOLLOWING TRUST FUND.

Roscoe v. Winder (1915) 1 Ch. 62. In this case one William Wingham purchased the assets of the plaintiff company. He agreed to collect and pay over to the company the book debts due to the company at the time of the sale. He did collect debts to the amount of £623 8s. 5d. He paid no part of this sum to the company, but paid into his private bank account £455 18s. 11d., part of the amount so collected. He subsequently drew against this account for his private purposes, and reduced the balance to £25 18s. Wingham died bankrupt, and a trustee was then appointed of his estate. At the time of his death a balance of £358 5s. 5d. stood to the credit of his bank account. The plaintiff company contended that the whole of this sum was impressed with a trust in the plaintiff's favour; that the payments into the account should be deemed to have been made by the deceased to make good *pro tanto* the trust moneys which he had misapplied. But Sargant, J., held that there was no such presumption, and that the only part of the balance which was ear-marked as the plaintiff's fund was the £25 18s.

BUILDING SOCIETY—OFFICIAL RECEIVER—LIQUIDATOR—CREDITORS—DIVIDENDS PAID UNDER JUDGMENT SUBSEQUENTLY VARIED IN APPEAL—PAYMENT BY MISTAKE OF LAW—REFUNDING OVER-PAYMENT—MISTAKE OF COURT.

In re Birkbeck Permanent Building Society (1915) 1 Ch. 91. This was a winding-up proceeding in which by the judgment of Neville, J., affirmed by the Court of Appeal, certain shareholders were declared to be entitled to be paid in full in priority to other shareholders, and were accordingly so paid by the official receiver who was the liquidator, before he was notified of any appeal to the House of Lords. Subsequently the decision of the Court of Appeal was varied, and all shareholders were declared to be entitled to rank *pari passu*. This was an application by the liquidator to compel the shareholders who had thus been overpaid to refund the amount of the overpayment. Neville, J., held that the official receiver, being an officer of the Court, the overpayment in question was a mistake of the Court, and that it should be refunded, and he so ordered.