

RECENT DECISIONS.

this case, the M.R. observes (i.) that although the Statute of Limitations did not affect Courts of Equity, because it only applied to what were commonly called common law actions, now bills of equity have been abolished, and wherever it is an action to recover a debt upon a contract, the statute is binding upon the High Court in every case in which it applies ; (ii.) it is no longer necessary, nor is it the practice, as far as personal estate is concerned, to bring an action by one creditor on behalf of others ; (iii.) a decree can be obtained now in a very few days, and therefore the reason for the decision in *Sterndale v. Hankinson*, no longer applies, and *cessante ratione legis, cessat ipsa lex*.

COMPANY—JURISDICTION.

Of *Cerde Restaurant Co. v. Lavery*, p. 555, it seems only necessary to say that it affirms the jurisdiction of the Court to restrain by injunction a person claiming to be a creditor of a company from presenting a petition to wind up the company, where the debt is *bona fide* disputed, and the company is solvent.

EQUITABLE PRIORITIES—INNOCENT PURCHASERS.

The next case, *Keate v. Phillips*, p. 561, is "a most singular case," (per Bacon, V. C., p. 575), the Court having to decide, under very complicated circumstances, whose right was to prevail as between several innocent parties who had equally suffered through fraud. Without going into the facts minutely, it seems possible to state the points which came up for decision with sufficient clearness. They were as follows : (i.) A fraudulent mortgage obtained an advance upon the security of a fictitious lease. His solicitor, fully conscious of the fraud, stood by while the mortgage was being completed, and received the mortgage money. The question was whether, from this conduct of the solicitor, it must be inferred that he *represented* that the fictitious lease to the mortgagor, and then the underlease from the mortgagor to the mortgagee, was a valid, genuine, legitimate transaction. As to this Bacon, V. C., merely observes :

"Those are the slenderest representations, so far as the evidence goes, that can be conceived,"—and proceeds to deal with the next point : (ii.) The said solicitor at the time of this transaction had an interest in the property in question, viz.: an equity of redemption, which he had mortgaged to one L. And the question now arose whether, assuming his above-mentioned conduct did amount to a representation, as maintained, he did, by virtue and by force of this representation, charge the property in which he had this equity of redemption ; and whether, as a consequence, when he acquired, as at a subsequent date he did acquire, the absolute beneficial interest in paying off L.'s mortgage, the defrauded mortgagee had a right to have the representation carried out to its full extent, and to the extent of making a charge upon the property supposed to be comprised in the fictitious lease, so as to give the defrauded mortgagee a prior equitable charge as against subsequent purchasers for value without notice. As to this Bacon, V. C., said, p. 577, that he had never heard of, and did not believe there was any case in which the principle in question had been carried to such an extent ; that, assuming the solicitor had been guilty of misconduct for which he could be punished, and a wrong which could be redressed against him personally, he was, nevertheless, at a loss to see how it touched the estate. This, he said, brought it close to the common law doctrine of estoppel :—"But the doctrine of estoppel is purely legal. There is no case in which a trustee, having made a fraudulent representation by which he was bound, or even a fraudulent conveyance, when he got his legal estate confirmed, but still remaining a trustee, was so estopped as to deprive the persons beneficially entitled to the estate which was theirs, and of which he was the trustee and trustee only. The doctrine of estoppel, therefore, in my opinion, has no place whatever in the case before me. * * * Where is the case to be found that says that a man who has committed a misde-