RECENT ENGLISH DECISIONS.

The *Law Reports* for December comprise 15 Q. B. D. pp. 561-711: 10 P. D. pp. 137-199; 30 Chy. D. pp. 191-657; and 10 App. Cas. pp. 437-679.

Bail in criminal case—Deposit of money with bail as indemnity.

Taking up first the cases in the Queen's Bench Division the first to be noted is *Herman* v. *Jeuchner*, 15 Q. B. D. 561, a decision of the Court of Appeal overruling the judgment of Stephen, J., and the case of *Wilson* v. *Stringnell*, 7 Q. B. D. 548, on which he proceeded. The plaintiff, having been convicted of keeping a disorderly house, had been ordered to find sureties in £50 for his good behaviour for two years. He applied to the defendant to become surety for him, but the defendant refused to do so unless the amount for which he was to become surety should be deposited with him for two years. The plaintiff accordingly deposited with the defendant £49, and the defendant became surety. Before the expiration of the two years the plaintiff brought the present action to recover the money. Stephen, J., at the trial gave judgment in his favour, but the Court of Appeal held the transaction illegal, and that no action would lie before or after the specified period, although the plaintiff had not committed any default, and although the surety had not been called on to pay the amount for which he had become bound. Brett, M.R., speaking of the effect of the contract, says:—

To my mind it is illegal, because it takes away the protection which the law affords for securing the good behaviour of the plaintiff. When a man is ordered to find bail, and a surety becomes responsible for him, the surety is bound at his peril to see that his principal obeys the order of the Court; at least this is the rule in the criminal law, but if money to the amount for which the surety is bound is deposited with him as an indemnity against any loss which he may sustain by reason of his principal's conduct, the surety has no interest in taking care that the condition of the recognizance is performed. Therefore, the contract between the plaintiff and defendant is tainted with illegality.

In *Langlois* v. *Baby*, 11 Gr. 1, it was held equally illegal to indemnify bail in a civil case, and see *Emes* v. *Barber*, 15 Gr. 679, and *Mendell* v. *Tinkiss*, 6 O. R. 625.

Arbitration—Torts—Death of party before award.

In *Bowker* v. *Evans*, 15 Q. B. D. 565, we have another decision of the Court of Appeal affirming the judgment of a Divisional Court. The case is an illustration of the maxim "*actio personâlis moritur cum persona.*" The parties to an action of tort agreed, before trial, to an order referring the matter in dispute to an arbitrator. The order provided that the arbitrator should publish his award, "ready to be delivered to the parties in difference, or such of them as required the same (or their respective personal representatives, if either of the said parties die before the making of the award)." After the hearing of the evidence, but before the award was made, the plaintiff died. The arbitrator afterwards published his award; the plaintiff's executors proved his will and took up the award, and, having applied to be substituted as plaintiffs in place of their testator, Field, J., granted the order, which was subsequently set aside on appeal to a Divisional Court, which latter decision the Court of Appeal now affirm. Brett, M.R., says at p. 568:—

The stipulation as to the delivery of the award to the respective personal representatives of the parties, if either of them dies before the making of it, being a matter of mere procedure, it has become absolutely futile, and has no meaning and no sense, and must be struck out of the order of reference; that is, the order of reference must be read as if the stipulation were omitted, the action being in tort. The stipulation has been introduced inadvertently, and we must decide the appeal on the footing that the cause of action was gone on the death of the plaintiff, that the jurisdiction of the arbitrator then determined, that there was nothing for him to decide, and that his award cannot be enforced.

Composition arrangement—Secret bargain to give creditor a bonus in addition to composition.

Re Milner, 15 Q. B. D. 605, although a bankruptcy case, is one re-affirming an important principle of law, applicable to all composition arrangements between a debtor and his creditors. The Court of Appeal lays down the rule that any secret understanding or bargain with any creditor signing a composition deed that