

RECENT ENGLISH DECISIONS.

solicitors to appear for the company, and consent to an immediate judgment, which was done. A garnishee order was then obtained against the insurance company, under which the £3,000 was paid to the directors, and applied in part payment of the debt due to them by the company. It was held by the Court of Appeal (affirming Bacon, V.-C.) that the transaction did not constitute a fraudulent preference, and that as it was a payment of a just debt while the company was a going concern, it was a dealing by the company in the course of business within the condition of the debentures.

SOLICITOR'S LIEN—FUND RECOVERED—PRIORITY OF LIEN—DISCHARGED SOLICITOR.

In *Re Wadsworth, Rhodes v. Sugden*, 34 Chy. D. 155, Kay, J., held, following *Cormack v. Beisly*, 3 D. G. & J. 157, that when a solicitor is discharged by the client in an action before judgment, and the action is continued by another solicitor, and a refund recovered therein, the lien of the latter solicitor for his costs is entitled to priority over that of the discharged solicitor.

WILL—EXERCISE OF SUPPOSED POWER—ELECTION.

In *re Brooksbank, Beauchlerk v. James*, 34 Chy. D. 160, is an illustration of a somewhat curious phase of the doctrine of election, which Courts of Equity have established. In this case a testatrix, assuming herself to be entitled to a power of appointment, which in fact she did not possess, by her will assumed to exercise it in favour of certain named persons, and by the same will gave to J., one of the persons entitled to the property she had assumed to appoint, certain other property over which she had a right of disposal. It was held by Kay, J., that the devisee, J., was bound to elect whether he would take under or against the will, and if under the will, he must confirm the appointment.

VENDOR AND PURCHASER—CONTRACT BY TESTATOR TO SELL LAND—DEFECTIVE TITLE—CONVERSION.

The only point we think it necessary to notice in *Re Thomas, Thomas v. Howell*, 34 Chy. D. 156, is that relating to the equity doctrine of conversion. A testator had entered into a contract to sell a parcel of land, and died before completion. The title was found bad as to a large part of the property, and the trustees of his will cancelled the contract.

It was held by Kay, J., that the contract having proved abortive did not effect an equitable conversion of any of the property comprised therein.

Kay, J., says on this point, at p. 170:

The title being bad at the time of the testator's death, and not having been accepted by the purchaser in the testator's lifetime nor since his death, and the contract itself having been rescinded because of its invalidity, I am of opinion that the contract did not effect any conversion of the estate in equity.

PRACTICE—IRREGULARITY—SETTING ASIDE PROCEEDINGS FOR IRREGULARITY.

In *Petty v. Daniel*, 34 Chy. D. 172, Kay, J., held that irregularities in proceedings might, if the court sees fit, under Ord. 70, r. 1 (Ont. R. 473) be condoned. And also that a summons or notice of motion to set aside proceedings for irregularity should state the several objections on which the applicant intends to insist (see Rule 107, T. T. 1856, Holmsted's Rules and Orders, p. 523). An order for an attachment had been obtained on proceedings which the court held to be irregular, and the defendant had been arrested thereunder, but under the circumstances the court refused to set aside the order; but in the exercise of its discretion discharged the defendant from prison, making no order as to costs.

VENDOR AND PURCHASER—CONTRACT—STATUTE OF FRAUDS—VENDOR—COSTS.

The case of *Farrell v. Hunter*, 34 Chy. D. 182, is somewhat similar in its circumstances to *Wilnot v. Stalker*, 2 Ont. R. 78. The action was for specific performance of a contract for the purchase of lands. The memorandum in writing stated that "G. S. Lawson, as the solicitor for the vendor, and the said R. Hunter, do hereby respectively agree to and with each other to complete the sale agreeably to the conditions." The name of the vendor was not disclosed, but one of the conditions of sale provided for the delivery of an abstract of title commencing with a specified deed. It was proved that at the auction at which the defendant purchased, Lawson informed him that he (Lawson) was the beneficial owner of the property. But it was held by Kay, J., that the contract was invalid under the Statute of Frauds for omitting the name and description of the vendor; and that the deeds mentioned in the abstract re