

## RECENT ENGLISH DECISIONS.

to the defendant's solicitors on account of the defendant's costs, and on the reversal of his judgment it was asked that the solicitors might be ordered to refund; but the court refused to make any such order in the absence of notice to the solicitors, and intimated that even if notice had been given no order could be made against the solicitors personally, and that although the money had been paid to them, yet their client alone, and not the solicitors, was responsible for the money.

## WILL—CONSTRUCTION—GIFT PER STIRPES OR PER CAPITA.

In *Re Campbell's Trusts*, 33 Chy. D. 98, the Court of Appeal sustained the judgment of Pearson, J., noted *ante* p. 203. By the will in question the testator gave some houses to trustees in trust, to receive the rents and pay the same in equal moieties to his son and daughter during their lives, and after the death of either of them without issue living, upon trust to pay the whole thereof to the survivor during the life of such survivor; but in case there should be issue living of the first of them so dying, then upon trust to pay one moiety to the survivor and divide the remaining moiety between the children of the one so first dying; and after the decease of the survivor of the testator's children, on trust to sell the property and divide the proceeds equally amongst all and every of the child or children of each of them, the testator's son and daughter, who should attain twenty-one, in equal proportions. The son died, leaving eight children; the daughter had only one child, who attained twenty-one and died. The question was whether these grandchildren of the testator were entitled *per stirpes* or *per capita*, and the Court of Appeal and Pearson, J., held that they took *per stirpes*.

## TRUSTEE ACT, 1850—RE-APPOINTMENT OF EXISTING TRUSTEES—VESTING ORDER.

In *Re Vicat*, 33 Chy. D. 103, an application was made under the Trustee Act of 1850 to appoint trustees and for a vesting order under the following circumstances: A, B and C were named as trustees in a will; A died. B became lunatic, and C appointed E and F trustees in the place of A and B. Part of the trust estate consisted of a mortgage of freeholds. The appointment of E and F was un-

questionably valid; but the court was asked, on the authority of *Re Pearson*, 5 Chy. D. 982, to re-appoint them and make an order vesting the mortgage property in C, E and F. This the Court of Appeal declined to do, holding that the re-appointment by the court of trustees already validly appointed is a nullity. The court, however, gave leave to amend the petition by asking for the appointment of some person to convey in the place of the lunatic jointly with C to himself and E and F, and on the petition being so amended made an order accordingly.

## TITLE DEEDS—CUSTODY OF DEEDS—SEVERAL PERSONS INTERESTED IN DEEDS.

*Wright v. Robotham*, 33 Chy. D. 106, was an action brought to compel the delivery up of certain deeds which had come into the possession of the defendants under the following circumstances:—

The defendants were the successors in business of certain solicitors to whom the owner of an estate had given the title deeds for safe keeping. Subsequently the owner settled the estate to which the deeds related, and under this settlement the plaintiff became entitled to part of the land, and the heir-at-law of the settlor to the residue. The heir-at-law could not be found and was not a party to the action. The Court of Appeal, affirming Kay, J., held that the defendants under these circumstances should not be ordered to deliver up the deeds to the plaintiffs, but that they should be directed to deposit them in court, with liberty to the plaintiffs to inspect them and take copies. Kay, J., directed an inquiry as to the heir-at-law; but, on appeal, this direction was struck out. The principal point was succinctly put by Lindley, L.J. "The question is reduced to this, where two persons are entitled to title deeds can one recover without the other? I am of opinion that Mr. Justice Kay was right in holding that he cannot."

## SOLICITOR AND CLIENT—MORTGAGE BY CLIENT TO SOLICITOR TO SECURE DEBT PRESENTLY PAYABLE—UNIVERSAL PROVISIONS.

In *Pooley's Trustee v. Whetham*, 33 Chy. D. 111, an attempt was made to set aside a sale made under a power of sale in a mortgage upon an interest in a railway, executed by a client in favour of his solicitor, on the ground