

RECENT ENGLISH DECISIONS.

party was not at liberty to remarry so long as the innocent party remained unmarried. The wife and S., shortly after the divorce, returned to England, and there went through the form of marriage according to law, whilst the innocent husband was still unmarried. It was held by Sir James Hannen that the divorce was valid, and that as the divorce had the effect of cancelling the existing marriage, the parties were restored to the condition of unmarried persons, and were at liberty to remove to England and contract a fresh marriage according to the law of England, notwithstanding the colonial law prohibiting the remarriage of a divorced person under such circumstances, and, that therefore, the marriage to S. was valid.

CRUELTY—CONDONATION.

In *Mytton v. Mytton*, 11 P. D. 141, it was held that a persistent course of harsh, irritating conduct, unaccompanied by actual violence, but carried to such a point as to endanger the petitioner's health, and renewed after the resumption of interrupted cohabitation, constituted legal cruelty sufficient to justify a decree of judicial separation.

PROBATE—TWO WILLS—SECOND ACTION TO ESTABLISH A WILL—STAYING PROCEEDINGS.

Peters v. Tilly, 11 P. D. 145, was an action to obtain probate of a last will. There had been a previous action by the next of kin for letters of administration with the will annexed, bearing date 1868. In opposition, parties claiming to be legatees set up the contents of a late will, alleged to have been executed in 1877 or 1878, but which could not be found. The Probate Division held that the contents of this latter will had been proved, and granted probate, but the Court of Appeal reversed this decision, "without prejudice to any application for probate of the said will if found and produced," and this decision of the Court of Appeal was subsequently affirmed by the House of Lords. The present action was then brought for probate of the second will by the executor and residuary legatee thereunder, who had been the confidential solicitor for the deceased, and who had acted as solicitor for the legatees in the previous litigation. This suit was founded upon fresh evidence of the contents and execution of the second will. The defendant applied to stay the proceedings

generally, and this Butt, J., declined to do, but inasmuch as the plaintiff had been privy to the prior suit, he ordered proceedings in this action to be stayed until the costs of the former suit should be paid.

BILL OF LADING—PERILS OF THE SEA—BURDEN OF PROOF—NEGLECTANCE.

The Xantho, 11 P. D. 170, was an action brought against a shipowner for the loss of goods carried under a bill of lading containing the usual exception against perils of the sea, it appeared that the goods were lost in consequence of a collision between the carrying ship and another, and it was held by the Court of Appeal that this was not *prima facie* evidence of a loss within the exception.

MORTGAGES IN POSSESSION—ACCOUNT—DAMAGE TO MORTGAGED PROPERTY.

Proceeding now to the cases in the Chancery Division, the first to which we would call attention is *Taylor v. Mostyn*, 33 Chy. D. 226. The plaintiffs in this case were mortgagees in possession of a colliery, and were also lessees of the same property under a lease by way of mortgage, for a fixed term of years at a rent and a certain royalty for all coal mined. The lease contained covenants to leave pillars of coal to support the roof, and not to work or remove the pillars. The mortgagees sublet, and gave their sub-lessees permission to work and remove the pillars which they did. In taking the mortgage accounts it was held that the mortgagees must be treated as having themselves wrongfully removed the pillars and must be charged, not with the amount of royalty reserved, but with the full value of the coal so taken, subject to a deduction for the cost of bringing it to the surface, but not for the cost of severance. Some time after the usual foreclosure judgment directing the accounts, it was discovered that the mines had been flooded in consequence, as the mortgagors alleged, of the improper working of the mines or the removal of the pillars by the sub-lessees. The mortgagors then applied to have an account taken of the damage thus occasioned, under the judgment as it stood, but it was held by the Court of Appeal that though the application was wrong in form, yet that the mortgagors were entitled to relief, and a supplemental order was made directing the account sought, and further directing that the