

RECENT DECISIONS.

objection to paying that debt after his death out of his assets, real and personal. * * * There is nothing devoted in any shape to land or to an interest in land, or kept out of the power of alienation which it was the real object, or one of the real objects, of the statute to keep always in view, and, looking at the nature of the transaction, there is no ground whatever upon which this debt can be refused payment out of the assets." He then proceeds to review at great length, and distinguish *Jeffries v. Alexander*, 8 H. L. C., 594, and observes that there were there two circumstances, absent from the present case, and which were treated as the real grounds of the decision, viz. ; (a) the testator's assets were almost entirely real, and he knew that the charities could not be provided for except out of the real assets ; (b) the form of the instrument was such that no action could be brought upon it in the lifetime of the settlor, and it only provided for payment if he thought fit. It may be added that in this case of *in re Robson* the Court also held that a direction to hire rooms, the charity in question being for the purpose of providing poor women with rooms, did not bring the gift within the Mortmain Act (p. 166).

TIME—"FORTHWITH."

Ex parte Lamb, p. 169, shows that when an act is required by a statute or a rule of Court to be done "forthwith," the word "forthwith" has not a fixed and absolute meaning, but must be construed with reference to the objects of the rule and circumstances of the case.

SPECIFIC PERFORMANCE.

The next case, *Burrow v. Scammell*, arose out of circumstances "of somewhat unusual occurrence" p. 180. Defendant agreed to let and plaintiff to take certain business premises for one year, with option of having a longer term at the end of it. The plaintiffs went into possession, and expended money on alterations, but when, at the end of the year, they expressed a wish for a longer term,

it was found that the defendant was only entitled to one moiety of the premises, the other being vested in her son, a minor. The mistake of the defendant was perfectly innocent. The plaintiffs claimed (i) specific performance to the extent of the defendant's interest, with proportionate abatement of rent ; (ii) an enquiry as to damages. Bacon, V. C., granted the former relief, but refused the latter. He in this acted on the principles laid down by Lord Eldon in *Mortlock v. Buller*, 10 Ves. 292, which he says is now to be treated as settled law, viz. that under such circumstances as these,—“If the vendee chooses to take as much as he can have, he has a right to that, and to an abatement, and the court will not hear the objection by the vendor that the purchaser cannot have the whole.” The V. C. also observes,—“It cannot be disputed that Courts of Equity have at all times relieved against honest mistakes in contracts, where the literal effect and specific performance of them would be to impose a burden not contemplated, and which it would be against all reason and justice to fix upon the person who, without the imputation of fraud, has inadvertently committed an accidental mistake ; and also where not to correct the mistake would be to give an unconscionable advantage to either party. But no case has been referred to, nor, as I believe, can be found, in which the mistaking party has sought for, or could derive any advantage beyond the mere relief from the burden. * * To refuse the relief they (the plaintiffs') claim would leave them without protection, and probably expose them to considerable loss, and this for no other reason than that the defendant has made a mistake. The defendant would acquire the right of determining the possession of the plaintiffs at her mere will, and it would confer upon her an advantage wholly unconscionable and inconsistent with the terms of her contract.” As to the claim for damages the V. C. said that he found no damage had been sustained, beyond the sums which the plaintiffs must