

RECENT ENGLISH DECISIONS.

mated that it would have been different if, instead of asserting their independent superior title as mortgagees, the latter had claimed to receive the rents merely as agents of the mortgagor.

TRUSTS—COSTS OF ACTIONS BROUGHT BY TRUSTEES.

The case of *Stott v. Milne*, p. 710, may be noticed on account of two propositions which it illustrates and enforces: (1) That it does not follow that because an action is advised by counsel it is always and necessarily one which trustees may properly bring, and consequently one the costs of which are properly payable out of the estate. The advice of counsel is not an absolute indemnity to trustees in bringing an action, though it may go a long way towards it. (2) The right of trustees to indemnity against all costs and expenses properly incurred by them in the execution of the trust, is a first charge on all the trust property, both income and *corpus*; and the trustees accordingly have a right to retain them out of the income until provision can be made for raising them out of the *corpus*.

ORDER FOR SALE—CONVERSION.

In the case of *Hyett v. Mekin*, again, at p. 735, the point of law decided may be briefly mentioned, and in the language of Kay, J., is as follows: "If, in an action for administration of an estate the Court in the exercise of its undoubted jurisdiction makes an order for the sale of the estate, the order for sale will amount in itself to a conversion," and consequently if one of those entitled to share in the estate die subsequently to the order for sale, and before the actual sale, his share will pass to his personal representatives and not to his legal heir.

COMPANY—RESPONSIBILITY OF DIRECTORS.

Lastly must be noticed the case of *In re Denham & Co.*, p. 752, which is a case of great interest to directors of companies in these days of roguery. In

the words of the head note the case shews that an innocent director of a company is not liable for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance-sheets, if the books and accounts of the company have been kept and audited by duly appointed and responsible officers, and he has no ground for suspecting fraud, and consequently, if such a director has received, together with the other shareholders, dividends declared and paid in pursuance of such reports and balance-sheets, such dividends having been in fact, payments out of capital, he cannot be called upon to repay the dividends so paid, nor even the dividends received by himself. The following passages from the judgment of Chitty, J., who decided the case show clearly the view he took of the law: "A report of directors to shareholders, and a prospectus issued to the public for the purpose of obtaining subscriptions stand obviously upon a different footing. Speaking generally, a prospectus purports to be issued by all the directors whose names appear on the face of it; and it may well be that an ignorant director who has not really been personally engaged in issuing the prospectus is bound on the ground of his ratification; and such ratification may, when circumstances justify it, be inferred from his abstaining from taking any steps to inform the public that he was not a party to issuing the prospectus. But the report of directors, at a general meeting is issued under the powers of the articles and is generally, as it certainly was here, made by the board acting as such. The shareholders in this company knew, or must be deemed to have known, the provisions of the articles that two directors were to be a quorum, and therefore they were not justified, in my opinion, in accepting the report as the act of all the directors. Mr. C. (the director proceeded against) was not under any obliga-