

RECENT ENGLISH DECISIONS.

TENANT FOR LIFE—REMAINDERMAN—REPAIRS—POWER OF SALE—DISCRETION OF TRUSTEE.

In *re Courtier, Coles v. Courtier*, 34 Chy. Div. 136, some questions of interest arose as to the relative rights of a tenant for life and remainderman. A testator gave leaseholds, some of which were for short terms, to two trustees, one of whom was his wife, upon trust for his wife for life, and after her death upon trust that the whole should be sold, and the proceeds divided between four persons: and he authorized his trustees, if they should think it advisable, to sell his short leaseholds, and to invest the proceeds and allow his wife to receive the income during her life.

The leaseholds were in bad repair at the testator's death. The widow kept them up in the same state of repair, but declined to do more than this. The remaindermen sought to compel the widow personally to maintain the leaseholds in such a state of repair as to satisfy the covenants of the lease, so as to avoid forfeiture, or else to concur in selling the short leaseholds. But the Court of Appeal held (affirming Bacon, V.C.) that the widow was under no obligation to put the premises in such a state of repair as to comply with the terms of the leases. And although the widow had become the surviving trustee the court held that it had no power to interfere with her discretion by ordering a sale of the leaseholds without her consent.

With regard to the first point, Cotton, L.J. thus lays down the law at p. 139:

It is said that if the widow is to have the right to possess the leaseholds in specie during her lifetime she is bound to spend her money in putting them into sufficient repair to satisfy the covenants of the leases. I think that there is no such obligation on her. She is not bound to the landlords under the covenants: the trustees are bound, and it is their duty to repair the houses in accordance with the covenants in the leases out of the corpus of the estate. There is no rule of law that the tenant for life is bound to do these repairs out of the rents and profits. She is to enjoy the leaseholds in specie, but she is under no covenants to repair, and there is nothing in the will to show that the testator intended her only to have the net rents after making provision for the liabilities that arose in the testator's lifetime. . . . The appellants relied on *Re Fowler*, 16 Chy. Div. 723. But that was a very different case, and the question which arose there does not arise here. Here it is not a question whether the trustees are bound to keep up the houses, but whether the tenant for life is bound.

As to the second point, he says at p. 141:

It is clearly settled law that where the trustees have a power, as distinguished from a trust, although the court will prevent them from executing the power unreasonably, it will not oblige them to exercise it.

MORTGAGE—FORECLOSURE—MONEYS IN HANDS OF RECEIVER.

In *Coleman v. Llewellyn*, 34 Chy. Div. 143, the plaintiff had obtained a judgment for redemption or foreclosure, and for the appointment of a receiver. The judgment provided that any persons redeeming, or, in the event of foreclosure, the plaintiff, should be at liberty to apply for payment of the funds in court or in the hands of the receiver. At the date appointed for redemption there was money in court, and in the hands of the receiver paid under a mining lease since the report. North, J., had held that the plaintiff must have a new account taken, and a new day appointed for redemption; but the Court of Appeal considered the special provision in the judgment as to the moneys in question distinguished the case from *Jenner-Pust v. Needham*, 32 Chy. D. 582, by which North, J., considered the case governed, and overruled his decision, holding the plaintiff entitled to a final order, and to payment of the moneys in court and in the hands of the receiver without any further account.

DIRECTORS—PAYMENT BY DIRECTORS OF DEBT DUE TO THEMSELVES—PREFERENCE—DEBENTURE HOLDER.

In *Hilmott v. London Celluloid Co.*, 34 Ch. D. 147, the plaintiffs were mortgage debenture holders of a joint stock company, whose mortgages provided that they should be a charge upon all the property of the company, but that the company might, in the course of its business, deal with the property charged as the company should think fit. The action was brought against the directors and company to compel the former to account for a sum of £3,000 which they had received under the following circumstances: The company was indebted to the directors for advances. In September, 1884, the company's premises were burned down, and an insurance company admitted their liability to pay £3,000 in respect of the damage. The directors held a meeting, passed a resolution for commencing an action against the company for their advances, and for instructing the company's