

RECENT ENGLISH DECISIONS.

Pearson, J., requires but brief notice. It is to the effect that when a petition has once been presented to the Court and dismissed on the merits, a new petition in respect of the same matter cannot be subsequently filed, on the discovery of fresh evidence, without the leave of the Court being first obtained.

WILL—LIFE ESTATE TERMINABLE ON BANKRUPTCY—
GIFT OVER—TIME FOR ASCERTAINING CLASS.

We now come to another decision of the Court of Appeal which also affirms the judgment of Pearson, J., *Re Bedson's Trusts* (28 Ch. D. 523), which termed upon the construction of a will whereby the testator gave a fund to trustees to pay the income to his son for life, and after his death to pay and divide the fund equally among all the children which the son should have as and when they should respectively attain twenty-one. There was also a proviso that if the son should be adjudicated bankrupt the fund and the income thereof should thenceforth immediately go and be payable or applicable to or for the benefit of the child or children of the son "in the same manner as if he was naturally dead." After the death of the testator the son was adjudicated a bankrupt. At the date of the adjudication he had two children; other children were born to him afterwards, and the question was whether the subsequently born children were entitled to participate in the gift over? and the Court held that they were subject to the contingency of their attaining twenty-one. Lindley, L.J., thus states his conclusion as to the meaning of the will: "I think that the real meaning is that in the event of the bankruptcy of the son, such son's life interest is to cease, and the children are to take the interest in the fund as in the case of such son's death; but not that the fund is to be then divided amongst a particular class of children to the exclusion of any other class. The period of distribution is not the bankruptcy, but

the death of the testator's son." The case is also noteworthy for the difference of opinion expressed by two of the learned Judges of Appeal as to the application of artificial rules of construction to wills of personalty. Brett, M.R., being of opinion that such rules have been carried too far, and "that a will, especially one of personal property, ought to be construed according to the rules of construction applicable to all documents, and not according to such artificial rules." Cotton, L.J., on the other hand, said: "I cannot agree to the departure from well-known rules of construction which apply, unless the testator has expressed a different intention by the words which he has used." In this case however, notwithstanding, the difference of opinion thus expressed they nevertheless arrived at the same conclusion as to the meaning of the will in question.

WILL—ADEMPTION OF LEGACY.

In the next case to which we think it necessary to refer, viz., *Re Pollock, Pollock v. Worrall* (28 Ch. D. 552), the law on the subject of the ademption of legacies was considered by the Court of Appeal. A testatrix, in pursuance of a request of her deceased husband who had left her his residuary estate, by her will bequeathed the sum of £500 sterling to his niece Julia "according to the wish of my late beloved husband." Evidence was adduced that the testatrix had said, in June, 1880, that she had asked the legatee if she would receive £300 down, instead of a larger sum after her, the testatrix's death, and that the legatee had answered by letter stating that she would prefer the £300 down, but no such letter was forthcoming, and the legatee denied having written any such letter. It appeared, however, from entries in the testatrix's diary that in July, 1881, she wrote to the legatee telling her that £300 had been paid into the bank for her, "being the legacy from her uncle John." On the