Recent English Decisions.

Trial at bar—Actions in which the crown is interested.

Dixon v. *Farrer*, 17 Q. B. D. 658, is deserving of a passing notice for the somewhat interesting discussion by Wills, J., as to the right of the Attorney General to demand a trial at bar in any action in which the Crown is interested. He arrives at the conclusion that the right of the Crown to a trial at bar, when the Crown is the complaining party, is not a branch of the prerogative, but merely the survival in favour of the Crown of a right which was formerly common, alike both to sovereign and the subject, but which has been taken away from the latter by the Stat. Westminster 2. c. 30, which gives the writ of *nisi prius*, which does not apply to the Crown. But he also concludes that the Crown has the prerogative right to intervene in any cause, and on the statement of the Attorney General on his own authority that the Crown is interested in the subject matter of the suit, may claim a trial at bar.

Ship—Bill of lading—Damage caused by rats.

The short question decided in *Pandorf* v. *Hamilton*, 17 Q. B. D. 670, was that, where rats by gnawing a hole in a pipe on board a ship, had caused sea water to escape from the pipe so as to damage the cargo; that this was not a damage occasioned by a "danger and accident of the sea," for which, by the terms of a charter party, the ship-owner was exempted from liability, the Court of Appeal (Lord Esher, M.R., Fry and Bowen, LL.J.,) overruling Lopes, L.J., who held that it was.

Practice—Mortgage action—Costs—Appeal rules 1883 ord. 65 r. 1 (Ont. rule 428.)

Turning now to the cases in the Chancery Division, the first to be noted is *Charles* v. *Jones*, 33 Chy. D. 80, which was an action for redemption, in which charges of misconduct were alleged against the mortgagee. Bacon, V.C., had, notwithstanding, allowed him his costs, and it was on the propriety of his so doing that the plaintiff appealed. The defendant contended that the appeal, being in respect of costs, would not lie. And to this contention the Court of Appeal acceded. The result of their Lordships' decision may be gathered by the following passage in the judgment of Lopes, L.J.

A mortgagee has an absolute right to costs, unless they are forfeited by misconduct; if they are forfeited by misconduct, then they are within the discretion of the Judge. In the present case, assuming that there has been misconduct, the costs are within the discretion of the Judge. Then the Act says that where the costs are within the discretion of the Judge there shall be no apppeal unless leave be given by the Judge.

The effect of the decision is that though a mortgagee deprived of costs on the ground of misconduct may appeal on the ground that he has not been guilty of misconduct, yet it notwithstanding his misconduct, the court allows him his costs, that order is not appealable.

Promoter of company—Secret profit made by promoter—Liability to account—Solicitor.

Lydney & Wigpool Iron Ore Co., v. *Bird*, 33 Chy. D. 85, was noted by us, *ante* p. 139, when the case was before Mr. Justice Pearson. The action was brought to compel the defendant to account to the plaintiffs for a secret profit made by him as promoter of the company. That learned Judge, on the facts, was of opinion that the defendants were not in the position of promoters, and had dismissed the action; but this decision the Court of Appeal, taking a different view of the facts, have now reversed.

The Court of Appeal was of opinion that, on the facts, it was clear that the price of the property sold to the company had been increased at the instance of one of the defendants who took the principal part in getting up the company for the purpose of enabling the vendors to pay him the sum of £10,800, which the plaintiffs claimed to recover in this action, and that therefore this defendant was bound to account to the company for the profit so made; but in estimating the amount of the secret profit, for which he was accountable, it was held that he was entitled to be allowed legitimate expenses incurred by him in forming and bringing out the company, such as the reports of surveyors, the charges of solicitors and brokers and the costs of advertisements, but not a sum of money which he had paid to his co-defendant for guaranteeing the vendors to take up shares in order to float the company.

Pearson, J., in dismissing the action, had ordered a sum of money, which had been paid into court as security for costs, to be paid out