

PARTITION — OCCUPATION RENT DUE FROM CO-OWNER — SET OFF — MORTGAGEE OF CO-OWNER'S SHARE.

Hill v. Hickin, (1897) 2 Ch. 579, was a partition action in which a sale was ordered. One of the co-owners who had mortgaged his share was liable to account for an occupation rent, and in the distribution of the purchase money realized by the sale, the question arose whether this occupation rent could be set off pro tanto as against the mortgagee. Stirling, J., was of opinion that it could not, although it might have been set off against any part of the purchase money payable to the co-owner personally. The ground of the decision is that the liability of a co-owner to be charged with an occupation rent is not a liability which could be enforced at common law, and even if it were it is a claim personal to the co-owner, and does not create any charge or lien on his share, or against his mortgagee, who was held to be a purchaser pro tanto. The learned Judge, we see, throws doubt on the correctness of his own previous decision in *Heckles v. Heckles*, 2 W.N. (1892) 188.

TRUSTEE—BREACH OF TRUST—IMPROPER INVESTMENT.

In re. Stuart, Smith v. Stuart, (1897) 2 Ch. 583, Stirling, J., held that where a trustee invested the trust funds on the faith of a valuation of a valuer appointed by a solicitor who acted for the mortgagor, and which merely stated the amount for which the property was a good security, without giving the value of the property, and the advance made was more than two-thirds of the value stated in the valuation, such an act could not be relieved against under the Judicial Trustees Act, 1893, which enables the Court to relieve trustees against breaches of trust when it appears they have "acted honestly and reasonably, and ought to be excused."

COMPANY—WINDING UP, GROUNDS FOR—"JUST AND EQUITABLE"—ULTRA VIRES—COMPANIES ACT, 1862 (25 & 26 VICT., C. 89) S. 79—(52 VICT., C. 32, S. 4, D.)

In re Amalgamated Syndicate, (1897) 2 Ch. 600, a shareholder presented a petition to wind up a company. The company had been formed with the primary and principal object of taking over the undertakings, assets and liabilities