

RECENT ENGLISH DECISIONS.

"Here the documents, of which production is sought, are in the joint power and possession of two persons, one of whom is not before the Court, and cannot be made a party to the action; they are the title-deeds of a man who is not and cannot be brought before the Court. The application is that one man should be compelled to produce another man's title-deeds, because he has joint possession of them; an application which I should be very reluctant to grant unless bound by authority to do so."

DIVISIBILITY OF COVENANT TO PAY RENT.

The last case to be noticed in this number is *The Mayor of Swansea v. Thomas*, p. 48. The head-note states the facts very clearly. The defendant, being tenant of land under lease for years granted by the plaintiffs, and containing the usual's lessee's covenant to pay rent, assigned all her interest in the term. Subsequently the plaintiffs granted their reversion in part of the demised premises. No rent having been paid by the assignees of the defendant, the plaintiffs sued her for arrears of rent accrued due since the grant of their reversion in part of the premises, the sum claimed being a fair apportionment of the rent in respect of the other part, the reversion of which remained in the plaintiffs. Pollock, B., held that the covenant to pay rent was divisible; that the rent could be apportioned, although the action was founded on a privity of contract only; and therefore the plaintiffs were entitled to recover. The following extract from his judgment shows the reasoning by which he arrived at this result: "At common law, before the statute 32 Hen. VIII. c. 34, it is clear that, notwithstanding the assignment of the plaintiffs of their reversion in part of the premises, and notwithstanding any number of assignments by the lessee or his assignee, the plaintiffs might have sued the lessee or his executrix for the breach in question. The effect of that statute is to give to the assignee of the reversion the same right of suing the lessee and his execu-

trix as the original reversioner had. And it has been held that the statute transfers to the assignee the privity of contract, and further, that the covenant is divisible, so that the assignee of the reversion in part may sue upon the covenant in respect of his interest in that part: see *Twynnam v. Pickard*, 2 B. & Ald. 105. If, therefore, the reversioner can assign the reversion of part of the premises to A., and of the residue to B., and A. and B. can both sue in respect of their respective interests, there seems no good reason why, if the reversioner assigns the reversion of part of the premises to A., and reserves to himself the reversion in the residue, he should not be allowed to sue in respect of his interest in the residue."

MORTGAGE—"ASSIGNS."

In 22 Ch. D. pp. 1-131, the first case is *In re Watts, Smith v. Watts*. In this case W. the owner and occupier of a public-house, gave to H. and Co., brewers, a mortgage to secure £1,300, and also all sums which should at any time be owing to them from "W., his executors, administrators or assigns on any account whatsoever." W. died, giving by will, all his property to his wife for life. Letters of administration, with the will annexed, were granted to the widow, who carried on the business. H. and Co. having sold under the power of sale in the mortgage, now claimed to retain out of the purchase money, not only the £1,300, still owing and unpaid, but also a sum of £138 for beer supplied to the widow, after the death of W., claiming that they were entitled so to do under the mortgage. Counsel for H. & Co. admitted that if "executors or administrators" had been mentioned, they might be taken as referring only to a debt contracted by W., but which, owing to his death, had become due from his executors or administrators; but, they urged, the word "assigns" could not be so explained. The Court of Appeal now, in accordance with this view, held H. & Co. were entitled to retain the