

RECENT DECISIONS.

"undertaking" within the meaning of sec. 4 of the Imp. Railway Companies' Act, 1867, (Imp. 30-31 Vic., c. 127,) of which a receiver can be appointed under that section. The section in question places restriction on execution by a judgment creditor against the rolling stock and plant of railways, but provides that such creditor may obtain the appointment of a receiver "of the undertaking of the company." There appears to be no parallel enactment in our own General Railway Act (R.S.O., c. 165), in the interpretation clauses of which, it may be added, "the undertaking" is defined to mean "the railway and works, of whatever description, by the special Act authorised to be executed." There is a *dictum* in the judgment in this case that a receivership, under the above section 4, does not extend to unpaid calls.

UNDUE INFLUENCE—PARENTAL CONTROL—SOLICITORS.

The case of *Bainbrigge v. Browne*, p. 188, is one of some interest, it establishes the propositions that (1) when a deed conferring a benefit on a father is executed by a child who is not emancipated from the father's control, if the deed is subsequently impeached by the child, the *onus* is on the father to show that the child had independent advice, and that he executed the deed with full knowledge of its contents, and with a free intention of giving the father the benefit conferred by it, and if this *onus* be not discharged the deed will be set aside; (2) this *onus* extends to a volunteer claiming through the father, and to any person taking with notice of the circumstances which raise the equity, but not further. In this case the children, who desired to have a deed set aside as improperly obtained, were as follows: a daughter about twenty-five, a son about twenty-four, and a second son about twenty-two. Fry, J., held that none of them were entirely emancipated from the father's control. He says, p. 196, "None of them appears to me to have been conversant with business. The young lady had been residing in her father's house, and had not, ap-

parently, in any way mixed in the world except under his control and under his roof; at all events she had not resided apart from him. The two sons were students in Universities, and were not familiar with legal matters." The deed in question was one in which the children had charged their reversionary interests under a marriage settlement with the payment of certain mortgage debts due by their father. They executed it in the presence of a clerk of their father's solicitor, who had prepared or approved the deed, the clerk attesting their execution. Fry, J., adverts to this fact, at p. 198 of his judgment, where he says:—"Unless I am to hold that it is absolutely necessary that the solicitor who is advising the children in such a case should be a different person from the solicitor who is advising the parent, I am unable to find that the defendants had notice of any of the circumstances from which undue influence can be inferred," and held the defendants had no such notice.

FORCIBLE ENTRY.

The case of *Edwick v. Hawkes*, p. 199, illustrates and interprets the statute of 5 Rich. 3, stat. 1, c. 8 relating to forcible entry, which would appear to be in force in this country just as other ancient English statutes relating to the same subject have been held to be, (*Boulton v. Fitzgerald*, 1 Q. B. 344; *R. v. McGreavy*, 5 O. S. 620.) The statute in question provides that even where there is a legal right of entry, no man shall enter with strong hand, nor with multitude of people, but only in a peaceable and easy manner. And Fry, J. held in this case that where a tenant, under a mistaken idea that he had forfeited his lease, and to avoid immediate eviction, signed a writing as follows: "I undertake to give you quiet possession on the 29th instant, and you may use this letter as leave and license to eject me without any process of law on that date," this was in effect a license to commit a crime under the above act, and therefore void. The learned Judge further holds, p. 21, that the operation