

increasing the principal sum, and agreed "that the said memorandum shall in no way affect our liability to the Public Trustee upon the covenants by us contained and implied in the said mortgage, or operate to release us therefrom; provided always that we shall not be liable to pay the said further advance of £1,500 or interest thereon."

Held by the Full Court that the form of consent entered into by the plaintiff to the variation of the mortgage was designed merely to preserve the contractual liability of the original mortgagors under their covenants, notwithstanding the entry by the mortgagee into a new transaction with the purchasers of the equity of redemption, and that it had no relation to the priorities between the mortgagee and the original mortgagors, and that upon payment by the latter of the sum originally secured they were entitled to redeem in such a way that the moneys paid by them should remain a charge upon the mortgaged property in priority to the further advance by the mortgagee.

Held, further, that the memorandum of variation constituted a new charge on the land by different mortgagors to secure a larger sum of money, and containing different terms and conditions, compounded of the provisions of the original mortgage and the provisions of itself, and that no authority could be implied from the written consent of the original mortgagors to the transaction enabling the mortgagee to exercise the power of sale in the new and different mortgage and still hold them liable on their covenant for payment of principal and interest contained in the original mortgage.

NOTE.—The latter portion of this decision of the Full Court has since been overruled by a decision of the Court of Appeal. (*Vide* 1928 G.L.R. 216.)

(13) *McGruer v. Gresham and the Public Trustee* (1927 G.L.R. 510; 1927 N.Z. L.R. 704).—Testator's will contained the following provision: "And I hereby authorize and direct my said trustees or trustee to invest the whole or such part of the residue of the said income or profits in all or any of the businesses owned or carried on by me at the time of my death with full discretion to my said trustees as to the investing of the said moneys and without my said trustees being in any way responsible for any loss which may occur in carrying on the said businesses carried on by me at the time of my death and to distribute any surplus income from time to time accruing in my trustees' hands between such charitable institutions in New Zealand as my trustees or trustee in their absolute discretion may from time to time think fit but so that the Salvation Army shall receive a larger portion thereof than any other charitable institution."

Held by the Full Court that income invested by the trustees in the businesses of the testator in pursuance of this provision became capitalized as from the time of such investment, and was consequently not distributable as surplus income but fell into the residuary estate.

(14) *Public Trustee v. Registrar-General of Land* (1927 G.L.R. 529; N.Z. L.R. 839).—A died intestate, leaving him surviving his widow and one child. Administration was granted to the widow, who got in the assets and paid the debts and procured herself to be registered proprietor of the realty in A's estate. She subsequently died, leaving a will probate whereof was granted to the Public Trustee. The Court declared that the Public Trustee did not automatically become trustee of the realty in the estate of A, and the Registrar-General was justified in refusing to register transmission to him.

(15) *Guardian Trust and Executors Co., Ltd. v. O'Neill* (1927 G.L.R. 545; 1927 N.Z. L.R. 830).—A testator who died prior to the passing of the Administration Act, 1885, devised certain real property to his son W. H. for life, with remainder to his children. The will later provided that if any of his sons should die in his lifetime or afterwards without issue the trustees were to hold the property devised and bequeathed "to him or them so dying as aforesaid to my eldest son for the time being and his issue. And subject to the trusts aforesaid I direct that the ultimate residue of my personal estate shall be in trust for, and I give and devise the same to my sons A. W., J. G., and L., their heirs, executors, administrators, and assigns." W. H. died without issue in 1925, and all the other sons of the testator predeceased W. H.