RECENT CASES.

ADMIRALTY — PRACTICE — APPEARANCE OF OWNER AFTER LIBEL IN REM; JUDGMENT IN PERSONAM. — The defendants' vessel was arrested, in a suit *in rem*, for damages caused by a collision. The defendants, who were foreigners, though not served, entered an appearance, bonded the vessel, defended the suit, and put in a counterclaim. *Held*, that personal judgment may be given against the defendants and their bail for the whole damage, though it exceeds the value of the vessel arrested. *The Dupleix*, 27 T. L. R. 577 (P. D.).

This case, following two cases on substantially the same question, may be taken to settle the law in England to the effect that, if the defendant enters an appearance in an action *in rem*, a personal judgment may be given against him. *The Dictator*, [1892] P. 304; *The Gemma*, [1899] P. 285. The arrest of a vessel on a libel *in rem* is thus given the same effect as a foreign attachment, which results in a personal action. *Atkins* v. *The Disintegrating Co.*, 18 Wall. (U. S.) 272. Such an attachment is the nearest approach to an action *in rem* found in the practice of the ancient admiralty court of England. See CLERKE, PRAXIS CURIAE ADMIRALITATIS ANGLIAE, 3 ed. (1722), 38. It seems curious that the later English cases should follow this practice in a suit professedly *in rem*, inasmuch as the conception of an action purely against the thing itself, based on a maritime lien, and quite distinct from a suit against the owner, was recognized by the Privy Council in 1850. *The Bold Buccleugh*, 7 Moore P. C. 267. Dr. Lushington, in 1842, expressed the opinion that no judgment *in personam* could be given in a suit *in rem*. See *The Volant*, 1 W. Rob. 383, 389. His view is followed in the United States. *The Monte A.*, 12 Fed. 331; *The Nora*, 181 Fed. 845.

BANKRUPTCY — DISCHARGE — EFFECT ON SURETY ON ATTACHMENT BOND. — Property of the defendant was attached more than four months prior to the filing of his petition in bankruptcy, and released on a surety bond. The defendant pleaded his discharge in bankruptcy. *Held*, that a special judgment with stay of execution may be rendered to hold the surety. *Butterick Pub. Co.* v. *Bowen Co.*, 80 Atl. 277 (R. I.).

Property of an insolvent defendant was attached within four months prior to his bankruptcy, and released on a surety bond. The plaintiff recovered judgment. The court granted an order upon the defendant and its surety for the production of the property attached, to enable the plaintiff to sue on the bond. *Held*, that the order should be annulled. *Wise Coal Co.* v. *Columbia Zinc & Lead Co.*, 138 S. W. 67 (Mo., St. Louis Ct. App.).

These cases represent the weight of authority. *U. S. Wind Engine & Pump Co.* v. *North Penn Iron Co.*, 227 Pa. St. 262; *Windisch-Muhlhauser Brewing Co.* v. *Simms*, 55 So. 739 (La.). The first rests upon the fiction that the bond is given for the lien. This is hard to sustain on principle, because the bond does not become a debt until judgment is unsatisfied. *Carpenter* v. *Turrell*, 100 Mass. 450. The discharge being a bar to the action, the contingency on which the surety's liability depends can never happen. See *Wolf* v. *Stix*, 99 U. S. 1, 9. But except for the bond, the plaintiff could enforce his lien. *Bassett* v. *Thackara*, 72 N. J. L. 81. A contrary decision in the principal case would mean that the plaintiff's advantage is lost if the defendant can, and retained if he cannot, obtain a surety. See *In re Albrecht*, 17 N. B. R. 287, 292. The decision accords with the spirit of § 16 of the Act of 1898, and does substantial justice. See *Hill* v. *Harding*, 130 U. S. 699, 703.

BANKRUPTCY — PARTNERSHIP AND INDIVIDUAL CLAIMS AND ASSETS — EFFECT OF ACT OF BANKRUPTCY ON NON-ASSENTING PARTNER. — One of