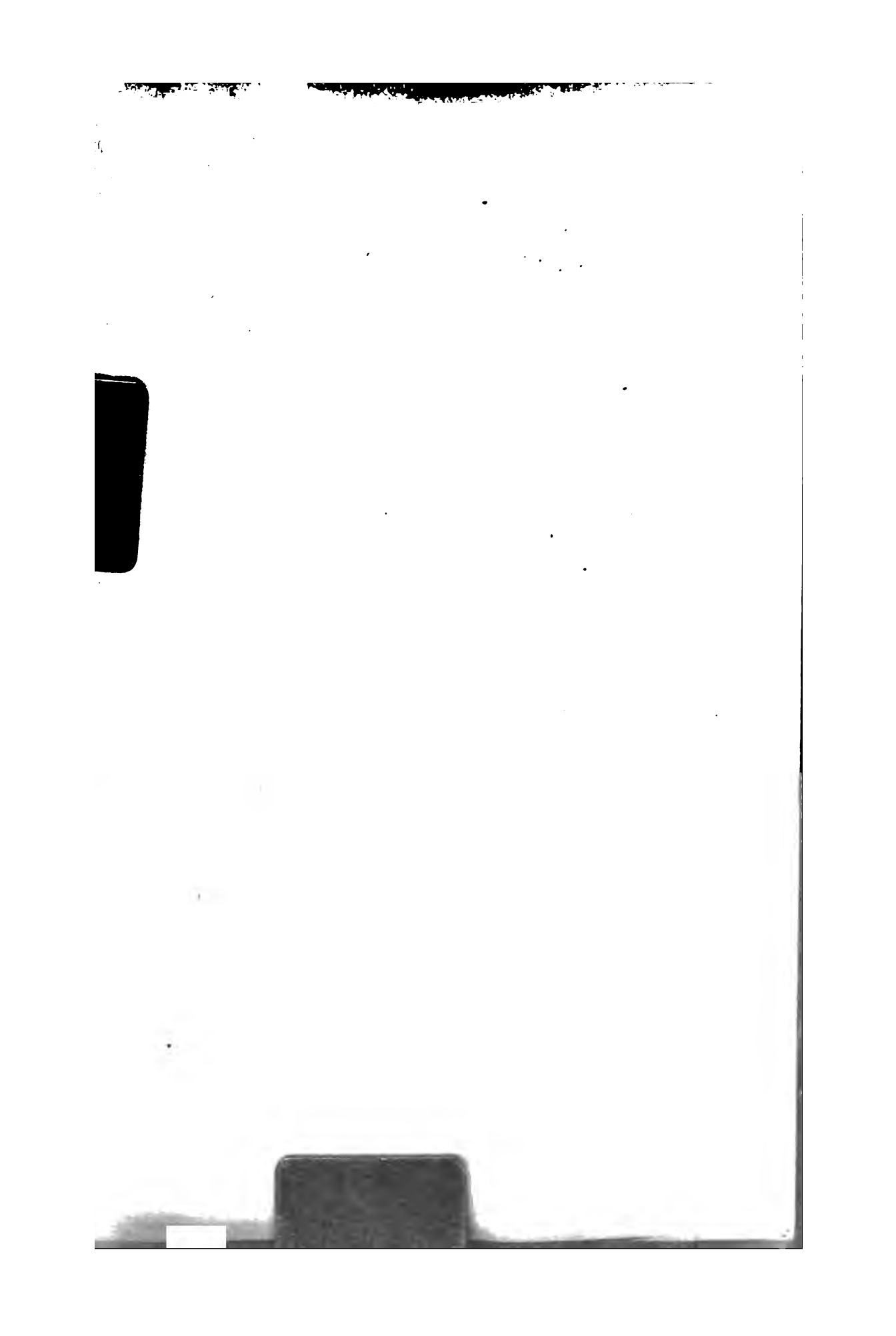

THE

Authorized

REPORTS

OF

CASES IN CHANCERY

ARGUED AND DETERMINED

IN

THE ROLLS COURT

DURING THE TIME OF THE

RIGHT HON. LORD ROMILLY,

MASTER OF THE ROLLS.

BY

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A

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PREFACE.

More than thirty years have now elapsed since this, the longest series of Authorized Reports ever published, was commenced.

To this work my professional life has been nearly wholly devoted, and, in concluding it, I am bound to express my deep acknowledgments to every branch of the Profession for their uniform and valuable assistance. To the Judges, not only for the loan of their written judgments, with which, as Authorized Reporter, I have been exclusively favoured, but also for their invaluable revision of every judgment, which has added so much to their authority and accuracy and has relieved me from a weight of responsibility.

To the Members of the Bar I must testify my gratitude, not only for their uniform readiness in affording me every information and assistance in their power, but also for their numerous acts of personal kindness.

To the Solicitors of the Court my best thanks are due for the unreserved way in which they have lent me the briefs and confidential papers in the causes, without which, especially in cases of construction, perfect accuracy would be impossible.

With these remarks I take my leave of the Profession in my character of the last of the authorized Reporters of the Court of Chancery, and commit my three dozen volumes to their indulgent consideration.

C. BEAVAN.

ROLLS YARD,
10th June, 1869.

A

GENERAL INDEX

TO THE

THIRTY-SIX VOLUMES

OF

BEAVAN'S REPORTS,

COMPRISING THE CASES DECIDED IN

THE ROLLS COURT

FROM

MICHAELMAS, 1838, TO JUNE, 1866.

BY

CHALONER W. CHUTE, Esq., M.A.,

BARRISTER AT LAW.

NOTICE TO THE BINDER.

THE INDEX (direct and reversed) of the Names of Cases Reported in all the Volumes should be inserted at the end of this Volume.

REPORTS

OF

CASES

ARGUED AND DETERMINED

IN

THE ROLLS COURT.

In re THE GENERAL INTERNATIONAL AGENCY COMPANY (LIMITED).

1865.
Jan. 21, 23.

Upon two petitions of shareholders of a company, one praying for a voluntary winding up under the supervision of the Court, and the other for a compulsory winding up, the Court, being unable to ascertain the wishes of the shareholders, ordered a voluntary winding up under the supervision of the Court, but directed that any shareholder should be at liberty to inspect the books and accounts, and have liberty to apply to the Court touching the matter.

Upon a petition to wind up a company, a provisional liquidator was appointed prior to its being heard. *Held*, that the provisional liquidator was not entitled to appear at the hearing (though served), and his costs were refused.

IN this case, two petitions were presented, one by the chairman and secretary of the company, praying that the company might be wound up voluntarily, but under the supervision of the Court. The other by a contributory, who prayed for the usual order for the compulsory winding up of the company. A Provisional Liquidator had been appointed prior to the hearing on the first petition.

There was no question but that the company must be wound up, and the only question was, as to the mode of doing it.

Mr.

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In re THE GENERAL INTERNATIONAL AGENCY COMPANY (LIMITED).

Mr. *Southgate* and Mr. *Brooksbank* argued that there ought to be a voluntary winding up.

Mr. *Selwyn* and Mr. *G. Hastings* insisted on a compulsory order.

Mr. *Baggallay* and Mr. *C. A. Turner* for the company.

Mr. *Edmund James* for the Provisional Liquidator.

Jan. 23. *The* MASTER *of the* ROLLS.

Although the Court is usually in the habit of deferring much to the wishes of the shareholders, in accordance with the recommendation to that effect contained in the statute, still it is in the discretion of the Court to adopt or reject this course. In the present case, it is extremely difficult to ascertain the wishes of the shareholders, notwithstanding the vote in favor of the voluntary winding up. On the evidence I am by no means clear that the majority are not in favor of a compulsory winding up; but their wishes are so coupled with an expression in favor of the appointment of one or other of two gentlemen as Official Liquidator, that it is very difficulty to satisfy myself as to their wishes on the subject.

Upon the whole, I think that the voluntary winding up under the supervision of the Court is the order which I ought to make on the present occasion. By these means, if it should appear not to be conducted well, it will be easy for any one of the shareholders to apply to the Court for a compulsory order; I think it will be less expensive and equally effective. I shall direct that any

1865.

In re THE GENERAL INTERNATIONAL AGENCY COMPANY (LIMITED).

any shareholder shall have liberty to inspect the books and accounts at all reasonable times, on giving reasonable notice, and that every shareholder shall have liberty to apply to this Court touching the matter. This, of course, will be at his own peril, if he make any improper or ill-judged application.

Mr. *E. James* asked for the costs of the Provisional Liquidator of the petition which had been served upon him. He referred to two unreported cases of *Re Snowbook, &c. Company; Re East Dyliffe, &c. Company,* decided in *July,* 1864; but—

The MASTER *of the* ROLLS held that the Provisional Liquidator stood in the same position as a Receiver, who was not entitled to appear, and refused his costs.

LAING *v.* CAMPBELL.

Dec. 4, 5, 6, 8.

Upon the dissolution of a partnership, and the settlement of all accounts between the partners, *A. B.* (the continuing partner) took some of the debts as good debts. One turned out to

THE Plaintiff *Laing* and the Defendant *Campbell* carried on the business of brokers in partnership, from 1852 to the 31st of *December,* 1859, when the partnership was dissolved and *Campbell* retired. The dissolution took place on the basis of *Laing* retaining the business, of his paying and receiving all the debts, and paying *Campbell* his share of the capital and profits down to the dissolution.

To

be bad, the securities for it having been fraudulently abstracted by a clerk. *Held,* that *A. B.* could not sustain a bill to rectify or set aside the settlement of accounts.

The account of a customer of a firm consisted of debits and credits arising from the purchase and sale of goods. The partnership was dissolved, the customer being then greatly indebted to it, but the account was continued in the same mode by the succeeding firm. *Held,* that the doctrine of appropriation of payments applied to the debtors' account.

1865.

LAING v. CAMPBELL.

To ascertain this, the accounts were gone over by the partners, and they agreed on such of the debts as they deemed good and on the losses to be written off against those accounts which were considered bad or doubtful. The amount thus found due to the Defendant, being ascertained, was paid to him, and mutual releases were executed.

Amongst the customers of the firm was a Mr. *Barber*, a saltpetre refiner, and the usual course of business between them was this:—*Barber* received from the firm warrants for raw saltpetre, and he was debited with the purchase value, and this saltpetre, when refined by him, was sold by the firm, and his account was credited with the produce. On taking the accounts on the dissolution of the partnership, a large sum appeared to be due to the firm from *Barber* on the deposit of warrants and other securities, and it appeared from the books that the debt was amply covered by the securities. In consequence, upon the settlement of the partnership accounts, *Barber's* debt was placed in the list of good debts, and it was taken as such by the Plaintiff.

After the dissolution, *Laing* entered into partnership with Mr. *Merridew*, and *Barber's* account was continued by the new firm in the same manner as before, by debiting his account with the purchase-money of the raw saltpetre, and crediting it with the amount for which the refined articles were sold. But in 1862, it was discovered, that during the partnership between the Plaintiff and Defendant, the warrants and securities deposited by *Barber* had, in many instances, either immediately or shortly after their deposit, been fraudulently delivered up to *Barber* by two of the clerks of the firm (*Goodburn* and *Crowther*), without repayment of the advances and without debiting *Barber* in the books

books of the firm with the values of the warrants and securities so delivered up. It was then discovered that *Barber* was greatly indebted to the new firm, and that he was hopelessly insolvent. The consequence was that his debt, though taken by the Plaintiff as good, was really bad, and the amount was lost.

The Plaintiff, by this suit, insisted that, by mutual mistake, *Barber's* debt had been taken as good, and that consequently, the Defendant had been overpaid to the extent of 1,750*l.*, and he sought either to recover this from the Plaintiff, or to set aside the transaction.

Mr. *Jessel* and Mr. *Waller*, for the Plaintiff, argued that the debt had been accepted as good under a mutual mistake, both the parties supposing that the debt was fully secured by warrants and securities deposited with the firm, whereas they had been fraudulently abstracted by the two clerks. That the Plaintiff was therefore entitled to open the accounts and have the error corrected.

They cited *Pritt* v. *Clay* (*a*); *Millar* v. *Craig* (*b*).

Mr. *Selwyn* and Mr. *Kekewich* for *Campbell*. There was no mutual mistake, the Plaintiff obtained, as a consideration for the final settlement, the good-will of the concern, and it was important that the debts due to the concern should not be pressed for or got in, as they would have been if the concern had been wound up. It was necessary that the usual credit to the customers should be continued, in order to preserve the business, and for that purpose an estimate only was made as to the value of the debts outstanding. The Plaintiff can no

(*a*) 6 *Beav.* 503. (*b*) 6 *Beav.* 433.

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no more ask for indemnity against a bad debt, than the Defendant would be entitled to an extra payment from the Plaintiff, if a debt represented as bad had turned out good. The Plaintiff has had the benefit of his bargain and has since continued the business, and it would be impossible for the Court to restore the parties to their former position.

Barber's debt was discharged by the subsequent dealings between him and the new firm, for, by the doctrine of appropriation of payments, all the subsequent credits must be applied in the discharge of the oldest debts; *Devaynes* v. *Noble* (*Clayton's Case*) (*a*); *Merriman* v. *Ward* (*b*); *Pennell* v. *Deffell* (*c*).

Mr. *Jessel*, in reply, argued that the doctrine of *Clayton's Case* could not apply to the present; that it had reference only to cash accounts and not to purchases and sales of goods, and that it would be impossible to set off saltpetre against cash. Again, payments made by *Barber* to *Laing* and *Merridew* could not be set off against a debt of *Laing* and *Campbell*, and that *Barber* never agreed to accept *Laing* and *Merridew* for creditors, in the place of *Laing* and *Campbell*.

The MASTER *of the* ROLLS.

I will read the evidence; but at present there appear to me to be two fatal objections to this bill. In the first place, it is very difficult to hold that if two persons meet together for the purpose of dissolving a partnership, and they take the accounts and examine the books, and, having all the necessary materials before them, they agree to set down and divide some of the debts as good

(*a*) 1 *Mer.* 568.
(*b*) 1 *John. & Hem.* 371.
(*c*) 4 *De G., M. & G.* 372.

good and others as bad, one partner can afterwards come and say, "If I had looked more closely into the matter, I should have found an error, and I would not have taken this debt as a good one."

It would be a very different thing if there had been an error in casting, or if the account had not been entered in the books. Both these parties were able to judge for themselves, and it appears to me that they must be bound by what they have agreed on at the time.

As to the other point depending on *Clayton's Case*, I cannot see any difference between this and that case. Here the ordinary account between *Barber* and the firm of *Laing & Campbell* is afterwards carried on with the firm of *Campbell & Merridew*, and it is treated in the same way, and although some of the payments are made in cash and others in the sales of refined saltpetre, still it is treated as one running account and no difference is made. If payments had been made in cash and bills, and carried to the general account, no express agreement by *Barber* would be necessary for applying the doctrine of appropriation of payments. At present I am unable to appreciate any difference between this and *Clayton's Case*.

The MASTER *of the* ROLLS. *Dec. 8.*

In this case, I am of opinion that the Plaintiff fails in his contention. The state of the case is this:—after a partnership between the Plaintiff and Defendant, which had lasted six or seven years, it was put an end to, and they ascertained what was due to each partner. This bill is filed on the assumption, that, in the settlement of the accounts and when the release was executed, there was

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was a common mistake, which this Court will remedy. The facts, as proved, shew that there was no common mistake, but that, if any, it was the mistake of the Plaintiff, and not of the Defendant. The mistake alleged is this:—they took *Barber's* as a good account: on it a balance of 6,892*l.* was due from him, to meet which it turns out that there were only securities for about 2,886*l.*

Close by them, at the time of the settlement, there was not only a book of warrants, but a chest, which contained all the securities, which might have been ascertained and examined. If any one ought to have examined them, it was *Laing*, for *Campbell*, of course, wished to treat all as good debts. *Laing* had the means in his possession of ascertaining the truth, but he never inquired, and after subsequently dealing with *Barber* for several years, he has found that *Barber* was insolvent at the time of the settlement, and he now contends that there was a mistake, and that the arrangement ought now to be set aside.

If *Laing* had a book containing an account of all the securities of *Barber*, can he justify not examining them? No account would ever be settled, if, by not examining the accounts and securities, a party to a settlement, several years afterwards, could insist that there was a common mistake. *Campbell* supposed the debts taken as such were all good, and he now admits that *Barber* could not pay his debt. But that does not make it a common mistake, or enable the Court to set aside or alter the transaction.

Another important consideration is this:—that I cannot put the parties in the same position as they were before this settlement. If *Barber's* account had been examined,

examined, and it had been found that he owed 7,000*l.*, but that the securities for it were only 3,000*l.*, means might have been taken to make him pay; but at last, when the crisis arrives, the new firm gets only 1,700*l.* How can I tell that more might not have been obtained?

The new firm go on dealing with *Barber* as before, and that is another unanswerable objection; for the consequence of this is, that all the payments made by *Barber*, and all the sums put to his credit, ought to be applied in payment of the balance due at the date of the settlement, according to *Clayton's Case* (*a*). I still retain the opinion that there is no possibility of separating one from the other. Even if you could separate cash payments from the other credits, I do not think, upon looking at the accounts, that it would be very beneficial to the Plaintiff.

The arrangement was this:—saltpetre was given to *Barber* to refine, it was then sold, and credit was given to him for the produce of the refined saltpetre. The argument is, that these must not be set off against one another. If they had been kept separate in the books, something might have been said; but nothing of the sort was done, and they are all treated as sums received from *Barber*.

It is one regular running account, in which one item must be set off against the previous one. The Plaintiff continued these books for two years, and he knew or must be taken to have known the state of them.

The bill fails, and must be dismissed with costs.

(*a*) 1 *Mer.* 568.

1866.

Mar. 15.
April.

LYDE on behalf, &c., *v.* THE EASTERN BENGAL RAILWAY COMPANY.

A company established for one purpose cannot, against the will of any dissentient minority (however small) undertake a business foreign to its original object. Thus a railway company cannot become a steam-boat company or carry on a brewery.

No portion of the funds of a company can be applied in procuring the means of carrying on a different undertaking, such as soliciting a bill in parliament to confer powers necessary for that purpose.

The Court will take the interests of the public into consideration when asked to interfere with a railway.

THIS was a motion for an injunction.

An act of parliament passed in the twentieth and twenty-first years of the reign of her Majesty, cap. 159, intituled, "*An Act for incorporating the Eastern Bengal Railway Company, and for other purposes,*" and which received the Royal Assent on the 25th *August*, 1857. It recited that several persons lately associated themselves together for promoting the establishment of a company (to be called "*The Eastern Bengal Railway Company*") for making and maintaining a railway, to be called "*The Eastern Bengal Railway,*" from *Calcutta*, on the left bank of the *Hoogly*, through the districts of *Kishnaghur*, *Jessore* and *Pubna*, to the right bank of the *Ganges* to *Kooshtee*, and ultimately to the city of *Dacca*.

The fifth section incorporated the company, with power to purchase, take, hold and dispose of lands in *India*, for the purposes of this act, and to make, maintain, regulate, work and use the *Eastern Bengal Railway* as now proposed, or any railway in *India*, wholly or partly in lieu thereof, and any extensions of and branches from the same, and any works and conveniences connected therewith, including *all requisite ferries and connections, by means of floating bridges or otherwise, across rivers and waters*, and other means of communications by water.

Subsequently

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Subsequently to the passing of this act, a deed of settlement was executed, dated the 1st of *February*, 1858, the second article of which was as follows:—

"The directors shall have the fullest power, from time to time, at their discretion, to apply to parliament for an act or acts for conferring on the company all such powers for extending the undertaking, increasing the capital and borrowing money, and all such other powers, for any other purposes incident or necessary to any of the purposes of the undertaking, as the directors from time to time think fit, and may take all such measures in that behalf as they think fit, and may procure the introduction into any such act of all such provisions for any purposes whatsoever in any way relating to the undertaking as they think fit, and may assent to the introduction into any such act of any provisions required by parliament, and may, in all other respects, act in and about any and every such application to parliament as if the directors were absolutely and exclusively interested in the undertaking."

What the company had done was this:—They had constructed and opened the railway from *Calcutta* to *Kooshtee*, a distance of about 100 miles, and they had contracted with the Indian government for an extension of the railway from *Kooshtee* to *Goalundo*, which was apparently about half way from *Kooshtee* to *Dacca*; but they seemed to have no present purpose of extending the railway from *Goalundo* to *Dacca*. Instead of doing so, they had entered into arrangements and contracts for conveying passengers from *Kooshtee* to *Dacca* by means of steam-boats, which either ferried across the water, or occasionally, when the waters were raised in the rainy seasons, by traversing the country, then under water, by steam-boats drawing a small depth of water and

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and towing after them flat-bottomed boats containing the goods, the passengers and luggage which required to be transported from *Kooshtee* to *Dacca*.

The Plaintiff objected to this, and remonstrated with the Defendants, whereupon the company introduced a bill into parliament, which proposed to give to the company powers to acquire and employ ships and vessels to carry passengers, &c., to and from any part of their undertaking, and to acquire coal and other mines, and lands on which there was timber, and to provide footways, &c., in connexion with the undertaking, wherever approved of by the government of *India*. In addition, it sought a general power for the enlargement of the objects and the purposes of the company, and proposed that the costs of the act should be paid by the company.

This bill was filed by a shareholder on behalf, &c., against the company and the directors, insisting that it was *ultra vires* for the Defendants to employ steamboats, &c., and that it would be a misapplication of the company to pay thereout the costs of the act of parliament. The bill prayed an injunction to restrain the Defendants from so using steam vessels, &c., and from applying the funds of the company to that purpose. It also asked a declaration that the powers sought were not authorized by the second article of the deed of settlement, and for an injunction to restrain the Defendants applying the funds of the company in support of the application to parliament.

A motion was now made for an injunction.

Mr. *Southgate* and Mr. *Swanston* for the Plaintiff.

Sir

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Sir *Hugh Cairns*, Mr. *Baggallay* and Mr. *Macnaghten* for the Defendants.

The following cases were cited:—*Colman* v. *Eastern Counties Railway Company* (*a*); *Simpson* v. *Denison* (*b*); *Attorney-General* v. *Great Northern Railway Company* (*c*); *Lancaster &c. Railway Company* v. *North-Western Railway* (*d*); *Great Western Railway Company* v. *Rushout* (*e*); *Simpson* v. *The Westminster Palace Hotel Company* (*f*).

The MASTER *of the* ROLLS. *April.*

This is a motion for an injunction to prevent the Defendants from employing the funds of the company in obtaining powers from parliament foreign to the objects and purposes of the company as originally established.

This is the principal object of the motion, but besides this, the Plaintiff, on the same grounds, seeks to restrain the company from employing steam-boats for the conveyance of goods and passengers beyond the limits of the railway. The first object mentioned is the most important, because, if the bill which the company is now soliciting in parliament should pass into an act, it will enable the company to perform all the acts at present complained of, which the Plaintiff seeks to restrain, and the injunction for the latter object, if granted, could only operate for a few months.

The

(*a*) 10 *Beav.* 1.
(*b*) 7 *Railw. Cas.* 403.
(*c*) 1 *Drew. & Sm.* 154.
(*d*) 2 *K. & J.* 293.
(*e*) 5 *De G. & Sm.* 290.
(*f*) 8 *H. of L. Cas.* 712.

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The general principles of law which apply to this subject are well and unmistakeably laid down in the various decisions, and which were cited and commented upon in the argument. It is quite settled now, that a company established for one purpose cannot, against the will of any dissentient minority, however small, undertake a business foreign to the objects of the original company. That a railway company cannot become a steam-boat company, cannot carry on a brewery or the like. It is also settled, that no portion of the funds subscribed for the original purpose can be applied in procuring or in endeavouring to procure the means of carrying on another and different undertaking, such as soliciting a bill in parliament to confer on them the powers necessary for that purpose. This unquestionably cannot be disputed, and indeed is not disputed by the Defendants, but they rely on the special words of the act by which they were constituted, and of the deed, the articles of which govern the duties and functions of the company.

The question I have to determine resolves itself into a question of construction of the words of the Act of 20 & 21 Vict. cap. clix., intituled "*An Act for incorporating the Eastern Bengal Railway, and for other purposes,*" passed in *August*, 1857, and also of the words of a deed of settlement of the company, made on the 1st *February*, 1858, which has been executed by the Plaintiff and the other shareholders of the company. The former, viz. the statute, applies to the question as to whether the present proceedings of the company in the employment of steam-boats, exceed the limits of the powers given to them by the act which incorporated the company. The latter, viz. the deed of settlement, applies to the question whether the application to parliament for the bill they are now soliciting is beyond the powers conferred upon the directors by the shareholders

at

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at the time when they advanced their money and became members of the company.

The 5th section enacts that the shareholders of the company shall be united into one body corporate, by the name of "*The Eastern Bengal Railway Company*," and with power to purchase, &c. [see *ante*, page 10]. What the company have done is as follows:—They have constructed and opened the railway from *Calcutta* to *Kooshtee*, a distance of about 100 miles, and they have contracted with the Indian government for an extension of the railway from *Kooshtee* to *Goalundo*, which apparently is about half way from *Kooshtee* to *Dacca*; but they seem to have no present purpose of extending the railway from *Goalundo* to *Dacca*. Instead of doing so, they have entered into arrangements and contracts for conveying passengers from *Kooshtee* to *Dacca* by means of steam-boats, which either ferry across the water, or occasionally, when the waters are raised in the rainy seasons, by traversing the country, which is then under water, by steam-boats not drawing much depth of water and towing after them flat-bottomed boats containing the goods and the passengers and luggage which are required to be transported from *Kooshtee* to *Dacca*. At least, from the evidence as far as I can judge, this seems to be the nature and character of the employment of the steam-boats used by the company. The evidence, however, is not very distinct on the subject, and I think it probable that, if this cause should come to a hearing, more clear and distinct evidence might be produced, for the purpose of accurately describing what it is they do, and at what times of the year, it being I think evident, that the same sort of water communication, or at all events the same direction of water communication, is not suited for all periods of the year; that, during the dry season, the communication must be confined to the rivers,

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rivers, while, in the wet season, it may probably be that a more direct route may be accomplished. But even as described at present, I should feel very doubtful whether this species of employment and use of steam-boats could properly be brought within the words "maintain, regulate, work and use the *Eastern Bengal Railway*, or any extensions of and branches from the same, and any works and conveniences connected therewith, including all requisite ferries and connexion by means of floating bridges or otherwise across rivers and waters and other means of communication by water." It certainly does not come within the words "ferries and connexion by means of floating bridges or otherwise across rivers and waters," and the words "other means of communication by water" must, I think, signify means, *ejusdem generis*, with ferries and floating bridges. Were it not so, these words must include any species of water communication, including sea-going vessels, which, even if useful for some extension of the *Eastern Bengal Railway*, were not, I think, within the scope and purpose of this act.

This was contested by the counsel for the Defendants, and as an illustration of the manner by which a railway company might legitimately embark in projects apparently inconsistent with its means and objects, it was suggested, that coals might be necessary for the purpose of the railway, and that thereupon the company might work a coal mine for that purpose, if, by so doing, it could obtain coals cheaper than by the purchase of them, and that by so doing, it would be fair and proper and not really inconsistent with the objects of the company, and that if it did work a colliery for this purpose, it would be foolish to prevent the company from obtaining a profit by the sale of such coals as were raised and not required for the company.

The

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The answer to this argument appears to me to depend upon the facts of each particular case. If, in truth, the real object of the colliery was to supply the railway with cheaper coals, it would be proper to allow the accidental additional profit of selling coals to others; but if the principal object of the colliery was to undertake the business of raising and selling coals, then it would be a perversion of the funds of the company, and a scheme which ought not to be permitted, however profitable it might appear to be. The prohibition or permission to carry on this trade would depend on the conclusions which the Court drew from the evidence. The same observations apply here; if the use of the boat is really to assist the traffic on the existing railway, it is lawful and proper; but if the object be to extend the traffic to places beyond the railway, which the railway is never intended to reach, then it is illegal and beyond the powers of the company.

I am also of opinion that the circumstances that the railway company is under the special control of the Indian government, that its funds are held by the government, its expenditure regulated by it, cannot alter the construction to be put on the words of the act, although this government control may afford an admirable reason why the company should be invested with much larger powers than are entrusted to an ordinary English company, who are unfettered by any such restriction.

If this had been an English company, and the matter had depended on this first point, I think I should not have hesitated in granting the injunction applied for; but two circumstances peculiar to this case induce me not to adopt that course on the present occasion. In the first place, it is the duty of the Court, in all these cases, to take into consideration the interests of the

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injurious, their only mode of resisting them, in my opinion, is, by obtaining the sense of the shareholders at public meetings of the company, duly convened for that purpose, or by inducing parliament to come to the conclusion that the powers ought not to be conceded.

This being my view, it follows, from what I have already stated, that it would not be proper for this Court to interfere with the present proceedings of the company; but that this Court should wait till the hearing of this cause, and see what, if any, additional powers and authority parliament may have thought fit to confer on this company. My decision therefore on this matter is that of which I expressed the result before the vacation, viz. that the motion should be refused, but that the costs of it should be costs in the cause.

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MACKINTOSH *v.* STUART.

May 2, 3, 6, 7, 30.

HASTIE, the father, died in 1808, leaving a widow and a large family of children in reduced circumstances.

In 1821, six of these children were living, namely, four sons, *Robert*, *John*, *James* and *Archibald*, and two daughters, *Anne* and *Margaret*. Three of the sons, viz. *Robert*, *John* and *James*, were carrying on a considerable business as coach makers at *Calcutta*, under the style or firm of *Stuart & Co.*, and they were occasionally engaged in commercial speculations. *Archibald Hastie* was carrying on business as a saddler in *London*, and acting as agent to *Stuart & Co.*, his brother's firm at *Calcutta*. The two sisters were residing with their mother, and during this time were supported by the united contributions of the four brothers. The money obtained for the goods, which *Archibald*, in the course of his trade, consigned to his brothers in *Calcutta*, and which were taken or sold by them, was remitted to him in *England*, in the shape of goods likely to realize the most profitable return in the English market. Accordingly it appeared from a series of letters of *James* to *Archibald*, written in *June*, *July* and *October*, 1822, that

A., in *India*, on his own responsibility, invested money belonging to his brother *B.* in *England* in indigo, which he consigned to *B.*, and he recommended him, in consideration of his (*A.*) not charging commission, to settle 1,000*l.* on each of his two sisters, which he suggested should be invested in spelter and consigned to him for sale. *B.* acceded to this, and *A.* sold the spelter and remitted the proceeds (nearly 4,000*l.*) to *B.* on account of his sisters. *B.* retained the money and gave his promissory notes

to his sisters for the amount. *Held*, that the 4,000*l.* belonged to the sisters, and that the gift of it could not be recalled.

In 1841, sisters voluntarily surrendered to their brother his promissory notes for money owing to them, but under such circumstances, that the transaction could not be sustained if complained of in due time. One sister died in 1852 and the other in 1857, and the brother died in 1860. In the following year, a bill was filed by the representative of the sisters to set aside the transaction. *Held*, that the Plaintiff wholly failed, this being an attempt to rip up a transaction nineteen years old, when all the actors in it were dead, and which transaction they all understood at the time.

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that *James* had invested the moneys then due to *Archibald* in the purchase of large quantities of indigo, which he consigned to his brother, and which he anticipated, from the rise in prices and the rate of exchange, would realize a net profit of from 16,000*l.* to 20,000*l.* to *Archibald*. *James* said that he had done this on his own responsibility, and that he had not, as he might have done, charged any commission on the transaction; but that, in consideration of this profit to *Archibald*, and the forbearance on his part, *James* hoped and requested that *Archibald*, on his part, would settle 1,000*l.* on each of their two sisters, *Anne* and *Margaret*, and in that case, in one of the letters written in *April*, 1823, *James* suggested that the 2,000*l.* should be invested in spelter and sent out to *Stuart & Co.* to be sold, and the produce employed for the benefit of the two sisters. This was accordingly done; *Archibald* acceded to the suggestion, invested the 2,000*l.* in spelter and consigned it to his brother, under the style of *Stuart & Co.*, by whom it was sold at a considerable profit, and by this means and the high rate of interest obtained in *India*, the 2,000*l.* were greatly augmented, and (after it had been still further increased by a contribution of 260*l.* by the three brothers in *India*) it amounted in the whole to 4,001*l.* 6*s.* 5*d.* This sum was remitted by *Stuart & Co.* to *Archibald Hastie* in the month of *September*, 1832, and duly received by him on account of his sisters. This money was retained by *Archibald Hastie*, but he gave a promissory note for 2,000*l.* to each of the sisters, to bear interest at 5*l. per cent. per annum*, which he continued to pay regularly to them down to the time of the transaction complained of. The promissory notes both bore date the 18th *February*, 1833.

In *July*, 1834, *Robert Hastie*, one of the brothers, died; he made a will by which he left all the residue of

of his property equally between his three surviving brothers and his two sisters, and he made the three brothers his executors.

Six years afterwards, in *July*, 1840, *John*, another of the brothers, died, and he made a similar disposition of his property, dividing his estate between his two surviving brothers and his two sisters.

The result of these testamentary dispositions was, that the fortunes of the two sisters were greatly increased, and that, instead of having only 2,000*l.* apiece, they had, on the death of *John*, a fortune, independently of the promissory notes, of from 9,000*l.* to 10,000*l.* each.

Thereupon, in *October*, 1841, *Archibald Hastie* applied to each of his sisters to return to him the promissory note of 2,000*l.* This was accordingly done by each of the sisters, by *Margaret* in a letter dated the 3rd *November*, 1841, and by *Anne* in a letter on the following day. *Archibald* acknowledged the receipt of them in a letter dated 7th *November*, 1841.

In 1850, *Margaret* married the Plaintiff. *Anne* died in 1852, the Plaintiff's wife (*Margaret*) died in 1856, and *Archibald Hastie* died in *November*, 1857.

This suit was instituted in 1861, and, in addition to other things, it prayed a declaration that *Archibald Hastie* fraudulently obtained from his sisters *Anne* and *Margaret* (the wife of the Plaintiff) the sum of 4,000*l.*, and it asked that this amount might be made good out of his estate to the estate of each.

The answer set up to this was, first, that the transaction

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action specially complained of was *bonâ fide*. Secondly, that it was not, after the time which had elapsed, to be now disturbed; and, thirdly, that it was included in and covered by settled amounts between the parties concerned.

This case was argued by,—

Mr. *Hobhouse*, Mr. *G. L. Russell* and Mr. *Leith* for the Plaintiff.

Mr. *Selwyn* and Mr. *Roberts* for *Stuart*.

Mr. *Wood* and Mr. *Boys* for other parties.

The following cases were cited: *Cooke* v. *Lamotte* (*a*); *Randall* v. *Errington* (*b*); *Aylward* v. *Kearney* (*c*).

The MASTER *of the* ROLLS.

May 30. In substance, this suit is instituted for the purpose of setting aside the transaction respecting the 4,000*l*. The history of the 4,000*l*. involves the narrative, not I believe an uncommon one in this country, of the rise to affluence and prosperity of a young family, left in indigent circumstances on the death of their father, mutually assisting each other, and supporting the mother and sisters, who were unable to co-operate in the business of their brothers.

[*The* MASTER *of the* ROLLS stated the circumstances of the case, as detailed above, and the letters of *Margaret*, *Anne* and *Archibald* of *November*, 1841.]

Certainly,

(*a*) 15 *Beav.* 239.
(*b*) 10 *Ves.* 423.
(*c*) 2 *Ball & Beattie*, 463.

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Certainly, as stated in the letters, the transaction does not look quite straightforward. If the transaction had been as must have been inferred from these letters it would bear the aspect of a brother recalling a voluntary gift made to his sisters to support them during indigence, but liable to be recalled when, from any cause, that indigence should have ceased. But this was not the transaction, the money was unquestionably the property of the sisters, which they could have kept or invested as they pleased, and although it had sprung originally from the bounty of *Archibald*, it had done so at the instigation of *James*, by whose exertions the amount has been doubled.

Judging also from these letters alone, the surrender of the notes has not the appearance of a voluntary *bonâ fide* gift by the sisters to their brother, and if they had instituted this suit against their brother and had done so recently after the transaction had occurred, and assuming also that there were no more evidence respecting it than I now have, it would, I think, have been very difficult for *Archibald Hastie* to have successfully sustained the transaction.

But the event occurred in *November*, 1841, one sister survived the transaction eleven years, and the other fifteen years, and neither of them ever complained of it. *Archibald Hastie* himself died in *November*, 1857; and, upwards of three years after his death, when all the actors in the transaction are dead, and not very far short of twenty years after the transaction itself, this bill is filed to set it aside and to obtain restitution of the 4,000*l.*

On behalf of the Plaintiff, this lapse of time is attempted to be got over by reference to the principle of equity

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equity that in cases of fraud, time only begins to run from the time when the fraud is discovered, and that, in this case, the return of the notes was obtained by the fraudulent representations of *Archibald*, and that this was only first discovered by the Plaintiff in searching amongst his wife's papers after his brother-in-law's death, and in the year 1859. But I think that this attempt to get over the lapse of time cannot be allowed to prevail. In the first place, the representations of *Archibald*, contained in his letter, though not strictly accurate, are not devoid of truth; he had given the 2,000*l.* from whence the money arose. Whether he could have avoided giving it, and whether *James* might not have charged commission and settled the amount of such commission on his sister, it would be idle to inquire and impossible now to ascertain, but that *Archibald* did give the money from whence the 4,000*l.* arose is certain. I am also convinced that both the sisters were perfectly well aware of what the transaction was, and that they cheerfully acceded to it. They probably felt grateful for all the support they had received from him and their other brothers, when it was unquestionably pure bounty on their part, and they probably wished to keep up the harmony and affection which seems to have pervaded the whole family, and, as they had an ample independence from other sources, that they might well give to *Archibald* what, though now their own, had originally sprung from his bounty and affection towards them. It was, in fact, as it appears to me, an act of bounty and a gift by the two sisters, and this is confirmed by the indorsement made by *Archibald Hastie* on the notes themselves which are still in existence.

That *Margaret* understood what the transaction really was is proved by the letter of the 9th *July*, 1850, written before her marriage with the Plaintiff. Nothing can

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can give a more accurate account of the whole transaction than her letter. She had nothing to enlighten her since *November*, 1841, what she knew in 1850 I am convinced she knew in 1841, and indeed throughout the whole affair. I am also convinced that whatever *Margaret* knew relative to the transaction with *Archibald* was also known to *Anne;* and it is too much to allow her legal personal representatives ten years afterwards to claim against the estate of her brother, that which she obviously abstained from claiming against her brother when she was alive. With respect therefore to the 4,000*l.*, I am of opinion that it is an attempt to rip up a transaction nineteen years old when all the actors in it are dead and which transaction they all understood at the time. In this respect, therefore, the bill wholly fails.

The bill, so far as it seeks to undo the transaction relative to the two promissory notes of 2,000*l.*, must be dismissed with costs.

WARDLE *v.* OAKLEY.

Nov. 18, 20. *Dec.*

A. by deed mortgaged freeholds to *B.* At the same time, the title deeds not only of the freeholds but of leaseholds belonging to *A.* were delivered to *B. Held*, in the absence of proof to the contrary, that *B.* had no lien on the leaseholds for the money advanced.

THIS summons was argued by

Mr. *Higgins* in support of the summons.

Mr. *Hobhouse* and Mr. *Jervis* for the Plaintiff.

Mr. *Cole*, Mr. *Locock Webb* and Mr. *Pearson* in the same interest.

The following cases were cited:—*Roberts* v. *Croft* (*a*); *Hunt* v. *Elmes* (*b*); *Colyer* v. *Finch* (*c*); *Vaughan* v. *Vanderstegen* (*d*).

The

(*a*) 24 *Beav.* 223; 2 *De G. & J.* 1.
(*b*) 2 *De G., F. & J.* 578.
(*c*) 5 *H. of L. Cas.* 928.
(*d*) 2 *Drew.* 289.

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WARDLE v. OAKLEY. *Dec.*

The MASTER *of the* ROLLS.

The question raised on this summons is whether the representatives of the testator *Phillips* can claim an equitable mortgage on certain leaseholds at *Ampleforth* in *Yorkshire*. The suit is instituted for the administration of the estate of *William Phillips* who died in *October*, 1863.

In *December*, 1857, Messrs. *Stevenson & Salt*, who were the bankers of the Defendant *Richard Banner Oakley*, by his desire delivered to Messrs. *Blair & Co.*, who were the solicitors of the testator *William Phillips* and of Mr. *Oakley*, a bundle of deeds relating to a freehold property at *Oswald Kirk* in *Yorkshire*, and also to two leasehold pieces of land at *Ampleforth* in the same county, for the purpose of enabling the Defendant *Oakley* to raise 2,000*l.* on the security of them.

In *January*, 1858, 200*l.*, part of the money required, was obtained from Mr. *Goodwin*, and the whole of the deeds relating both to the freehold and to the leasehold were deposited to secure that amount; on the 1st of *March*, 1858, this sum was repaid by Mr. *Oakley*, and on the 4th of *March*, 1858, a mortgage was duly executed of the freehold hereditaments at *Oswald Kirk* by the Defendant Mr. *Oakley* to *William Phillips* to secure the sum of 2,000*l.*, but which deed does not include the leaseholds. Mr. *Gould*, of the firm of *Blair & Co.*, says he prepared the indenture from instructions received from Mr. *Blair*. After the execution of the mortgage all the deeds, including those which related exclusively to the leaseholds, were handed by Mr. *Blair* to the testator, Mr. *Phillips*.

Afterwards, on the 24th of *January*, 1862, a further charge,

charge, by way of indorsement, was executed on the first deed of 4th *March*, 1858, for 4,350*l.*, and this deed does not include the leaseholds.

In *October*, 1863, the testator, *Phillips*, died.

Messrs. *Roy & Cartwright*, in *December*, 1863, were the solicitors of the Defendant Mr. *Oakley*, and they had full notice, at that time, that the deeds relating to the leaseholds were in the possession of the testator at his death, and that they continued to be and were then in the possession of his legal personal representatives.

I cannot, on the evidence, ascertain whether the claim of lien on the leaseholds was communicated to Messrs. *Roy & Cartwright* before the mortgage to Mr. *Wheldon*. *Gould's* affidavit says nothing about the lien claimed on the leaseholds. The paper sent on 16th *November*, 1863, is lost by Messrs. *Roy & Cartwright*; they ask for a copy, and the answer is given by sending particulars of property real and personal on mortgage to the testator, in which paper the claim of lien on the leaseholds is expressly set forth; but they do not say that this paper is a copy of that which was sent in *November*, 1863, and they decline to give any other. Upon this I cannot come to the conclusion that it is proved, as a fact, that communication was made to Messrs. *Roy & Cartwright* that a lien was claimed on the leaseholds on behalf of the testator's estate before the mortgage to *Wheldon*. The communication of the fact that the deeds relating to the leaseholds were in the possession of the testator at his death is proved, as I have already stated. But this does not involve the fact that a claim was made for a lien on the leaseholds, and I think that the burthen of proof lies on the representatives of the testator to establish

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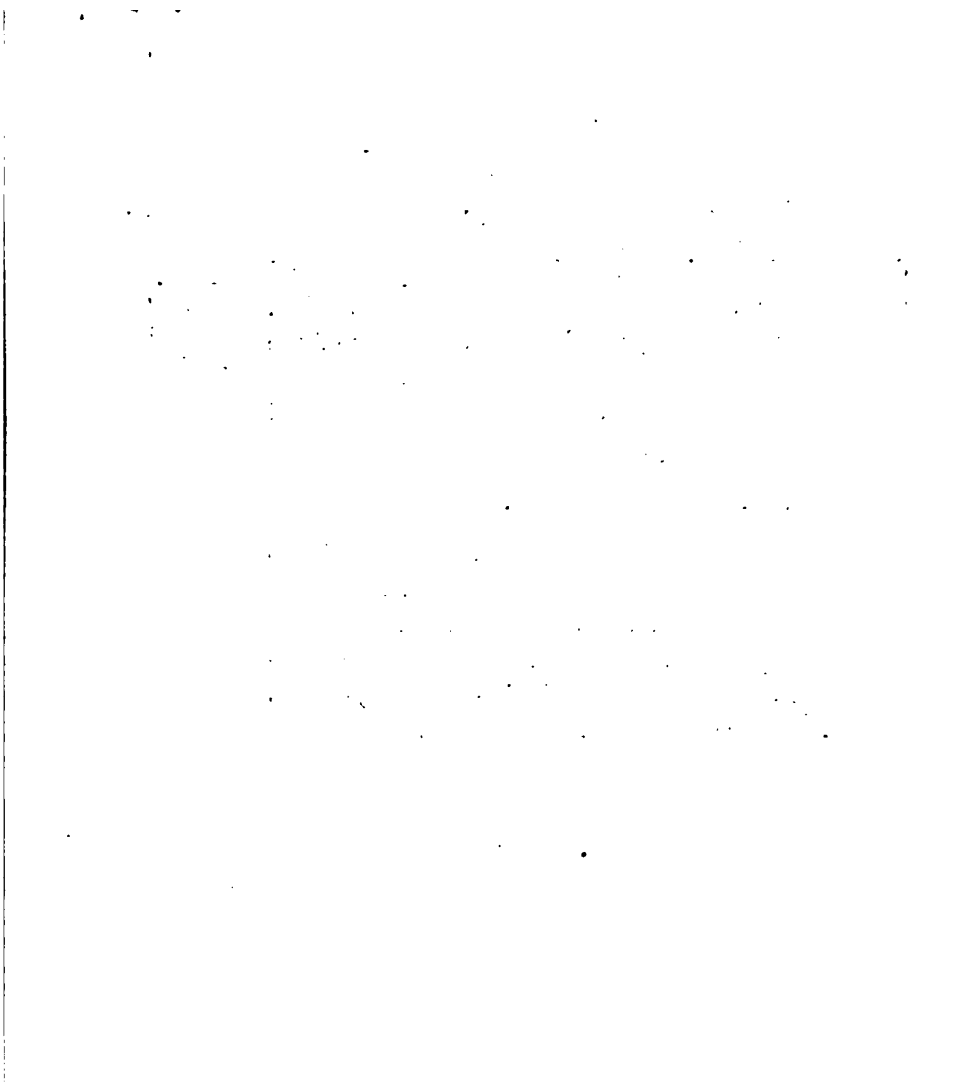
establish that such notice was given or knowledge obtained by *Roy & Cartwright*. On the 17th *November*, 1864, Mr. *Oakley* mortgaged the freeholds and the leaseholds in question to Mr. *Wheldon* to secure 5,000*l*.

In this state of things, I have come to the conclusion that the estate of the testator is not entitled to any lien on the leaseholds for the amount of the mortgage. I think that the extent of the contract between the testator and Mr. *Oakley* is shewn by the contents of the deeds of the 1st of *March*, 1858, and the 24th of *June*, 1862. There is no evidence of any deposit with the testator independently of these deeds and of what I have mentioned. When I say "no evidence of a deposit," I mean of a deposit with the intention thereby to secure repayment of an advance of money. It is true that they were deposited with *Goodwin* for that purpose, but *Goodwin* was paid off by the Defendant *Oakley*, and Messrs. *Blair & Co.* were the solicitors of both *Phillips* and *Oakley*. It is true also that the deeds were sent to the testator by Messrs. *Blair & Co.* immediately after the execution of the mortgage of 4th *March*, 1858, but if the leaseholds were intended to be included in the mortgage security, why were they omitted from the deeds, and why, if meant to be an additional security by way of deposit, was no memorandum made of it, and why is there a total blank of any evidence of such an intention on either side?

If I accidentally deliver a box of deeds to a creditor of mine, that would not constitute him an equitable mortgagee. It might well be that the delivery of the deeds would be *primâ facie* evidence of such intention which would throw the burthen of proving the negative on the owner; but if that is so, I think that, in the present case, this burthen is fully discharged by the production

duction and examination of the contents, purport and effect of the two mortgage deeds executed by Mr. *Oakley* to the testator, which shew the extent of the contract between the parties, what one intended to include in the mortgage and what the other accepted as a sufficient security.

I am of opinion that the deeds in question were sent by mistake with the deeds relating to the freeholds to Mr. *Phillips*, and that he neither contracted for nor intended to contract for any additional security on the leaseholds by way of equitable mortgage, and that the possession of the deeds, in such circumstances, confers no lien. Order accordingly.



A

GENERAL INDEX

TO

BEAVAN'S REPORTS.

ABANDONED MOTION.

[*See now* ORD. xl. 23.]

1. The Defendant, having abandoned his motion, was held liable to pay taxed costs, and not forty shillings. *Hervey* v. *Smith.* (No. 2.) vol. 23, p. 443
2. Where counsel are not instructed to move on the seal day mentioned in the notice of motion, the Respondent is entitled to the costs of the motion as abandoned, and counsel for the motion being afterwards instructed, cannot subsequently save the motion to the next seal. *Re Compton Smith.* vol. 23, p. 284
3. Where the Plaintiff, after answer, gave notice of motion for a Receiver, but filed no affidavits, and he ultimately abandoned it, the question of whether the Defendant is entitled to more than 40*s.* costs depended on whether the Plaintiff had given notice to use the answer. *Semble.*

Where, on a notice of motion, no affidavit has been filed, it might be abandoned on payment of 40*s.* costs, although the motion had, on a former occasion, been reserved. *Gorely* v. *Gorely.* vol. 25, p. 234

4. A notice of motion was given by the Defendant to dissolve an *ex parte* injunction obtained on affidavit. The motion was abandoned. Held, that the Plaintiff was entitled to full costs, though the Defendant had filed no affidavit in support of his motion. *Davis* v. *The South Eastern Railway Company.* vol. 23, p. 549

ABANDONMENT OF CLAIM.

[*See* DELAY, ESTOPPEL, WAIVER.]

A. and *B.* had charges on a plantation and the slaves. In 1834, an issue was tendered, in a suit between them, as to their priority on the slave compensation money. *B.* withdrew his claim, and the bill was, on motion, dismissed. Sixteen years afterwards, when the witnesses were dead, *B.*'s executors raised the same question of priority in regard to the plantation itself. Held, that they were concluded by the transactions of 1834. *Bushby* v. *Ellis.* vol. 17, p. 279

ABANDONMENT OF CONTRACT.

[*See* RESCINDING CONTRACT.]

1. Where time is not of the essence of the contract, and there is unnecessary delay by one of the parties in completing, the other has a right, by notice, to limit the time for completing the contract, and upon default to abandon the contract. *Greenwood* v. *Pulsford.* vol. 2, p. 180
2. *B.* agreed to sell her estate, and raise 1,000*l.* for *A.*'s use, and pay off two mortgages on his estate. In consideration of which, *A.* agreed to pay *B.* interest for life, and to settle his own estate on his wife (*B.*'s daughter) and their children. The 1,000*l.* was raised on a mortgage of *B.*'s estate, and the joint and several covenant of *A.* and *B.* Seventeen years elapsed, without any further steps being taken to carry the agreement into effect, and *A.* died. Held, that the agreement must be considered abandoned, and that it could not be enforced. *Cubitt* v. *Blake.* vol. 19, p. 454

See *Morris* v. *Timmins.* vol. 1, p. 411

3. Notice by railway company to take land, held abandoned after great delay. *Hedges* v. *The Metropolitan Railway Company.* vol. 28, p. 109

ABANDONMENT OF ORDER.

1. Upon a motion that an order of course to tax should be discharged or that the client should give security for costs, the Court ordered the latter only. Held, that the client could not afterwards, by mere notice, abandon the orders and file a bill for

the same matter. Such proceedings having however been taken by the client, they were stayed until he had paid the costs consequent on the order of course, and of the application. *Foley* v. *Smith*. *In re Smith*. vol. 12, p. 154

2. A party who has served and proceeded on an irregular order of course is not at liberty to abandon it, upon tender to his adversary of the costs. The order must be considered as a valid and subsisting order, until it is disposed of in some regular course, and when costs are due to a party, the amount must be ascertained in a regular course. *Pearce* v. *Gray*. vol. 4, p. 127

ABATEMENT OF SUIT.

[*See* REVIVOR.]

1. Re-delivery of documents deposited in the Master's Office ordered, on petition, in an abated suit. *Alderman* v. *Bannister*. vol. 9, p. 516
2. In an abated suit, the Master had no jurisdiction, under the 60th Order of 1828 (abrogated), to direct the re-delivery of papers deposited in his office. *Ibid*.
3. When a Defendant dies, his executors cannot compel the Plaintiff to revive, or, in default, have the bill dismissed. *Reeves* v. *Baker* (overruled *Norton* v. *White*, 2 D. M. G. 678). vol. 13, p. 115
4. Plaintiff's solicitor should certify abatement to the Registrar. *Saner* v. *Deavin*. vol. 14, p. 646
5. A Defendant died, and a contest as to one of his testamentary papers prevented probate being granted. The Court, on motion, appointed the executor named in his will to represent the deceased's estate in the cause, under the 15 & 16 *Vict*. c. 86, s. 44. *Hele* v. *Lord Bexley*. vol. 15, p. 340
6. On the death of one of several co-Plaintiffs, it was ordered, that the survivors should revive within a limited time, or that the bill should be dismissed, notwithstanding there was no legal personal representative, it being their duty to obtain administration. *Saner* v. *Deaven*. vol. 16, p. 30
7. An abatement after hearing does not prevent judgment being delivered or the decree being drawn up. *Collinson* v. *Lister*. vol. 20, p. 355
8. A suit having been instituted by *A*. and *B*., his mortgagee, as co-Plaintiffs, *B*. died before decree. It was ordered, on motion, that *A*. might carry on the proceedings against *B*.'s executors and devisees. *Hall* v. *Clive*. vol. 20, p. 575
9. A suit, which has been abated for more than twenty years, cannot be revived. *Bland* v. *Davison*. vol. 21, p. 312
10. One of several co-Plaintiffs was dead at the date of the decree, and the suit had in consequence abated. On motion, the representatives appearing and submitting to be bound, the Court revived the suit, and authorized the surviving Plaintiffs to prosecute the decree. *Smith* v. *Horsfall*. vol. 24, p. 331
11. A person served with the decree afterwards married. Held, that the proper way of bringing the trustees of her marriage settlement before the Court was by service of the decree. *White* v. *Stewart*. vol. 35, p. 304
12. Order for representative of deceased Plaintiff to revive or that bill should be dismissed. *Chowick* v. *Dimes*. *Lord Chichester* v. *Hunter*. vol. 3, pp. 290, 491
13. Where a suit abates after a demurrer has been filed, but before it has been heard, the Plaintiff and those representing him may file a bill of revivor and supplement for the purpose of having the demurrer disposed of; but the equity of the original bill being challenged by the demurrer, the Plaintiff in the second bill is not at liberty to claim the same, or additional relief by adding supplemental matter in corroboration of the original claim, and not required for the purpose of shewing by and against whom an order to revive may be properly obtained. *Bampton* v. *Birchall*. vol. 5, p. 330
14. A party to a special case died after it had been set down; liberty was given to amend by making his representatives parties. *Ainsworth* v. *Alman*. vol. 14, p. 597
15. After decree, a Plaintiff became bankrupt, it was ordered that he and his assignees should elect either to file a supplemental bill, or that all proceedings should be stayed. *Clarke* v. *Tipping*. vol. 16, p. 12

ABATEMENT OF LEGACIES.

[*See* LEGACY, PRIORITY OF ASSETS.]

1. A testator had settled a fund, with power of revocation by will. By his will he gave two sums of 5,000*l*. and 500*l*. sterling thereout, and the residue, after deducting them, to his son. At the making of his will and at his death the fund consisted of 7,100*l*. 3½ per cent. By payment of his debts and the costs, the fund became less than 5,500*l*. sterling. Held, that the pecuniary and residuary legatees were not to abate proportionably; but that the residuary gift failed altogether. *Petre* v. *Petre*. vol. 14, p. 197
2. A testator devised real estates in fee, in trust to pay to *A*. *B*., out of the rents, a rent-charge until he attained twenty-five, and 400*l*. a year to *C*. *D*. for life, and also during the minority of any tenant in tail in possession 150*l*. a-year for his maintenance. And "without prejudice to the trusts" aforesaid, and "to any jointure to be created under the

power thereinafter contained," to pay the surplus rent to the mother of *A. B.* until *A. B.* should be entitled to possession of the estate (which was to be at twenty-five). And "subject to the trusts aforesaid," the trustees were to hold in trust for *A. B.* for life, with remainder to his eldest son in tail, with power to *A. B.* to limit a jointure for his wife, with powers of distress and entry, and to create a term to secure it. *A. B.* appointed the jointure and died, leaving an infant tenant in tail. The income being deficient, held, that *C. D.*'s rent-charge, the widow's jointure, and the tenant in tail's maintenance, must abate *pari passu*. *Coore* v. *Todd*. vol. 23, p. 92

3. A testatrix bequeathed various sums of her bank stock, part of 9,000*l.* like stock, to several legatees, and all the residue of her said bank stock to *C. C.* The stock, at her death, was insufficient to pay the specified sums. Held, that all these legacies, including the residue to *C. C.*, must abate in proportion. *Elwes* v. *Causton*. vol. 30, p. 554

4. A testator gave 800*l.* to his daughter for life, and after her death he directed 500*l.* to be paid to her issue, "and that after such payment, the remaining part of the said principal 800*l.*, that is, 300*l.*," should revert to his "next lawful heirs." The assets were insufficient, and only 400*l.* was paid in respect of the legacy. Held, that the legatees of the 500*l.* had no priority over the legatees of the 300*l.*, and that the fund must be apportioned rateably between the two legacies. *Haslewood* v. *Green*. vol. 28, p. 1

5. The testatrix, by will, "out of the residue of her property," gave a legacy to *A.* By a codicil, she directed her executors, "out of the residue of her estate in case there should be sufficient," to invest a legacy for *B.* The residue being deficient: Held, that these legacies must abate *pari passu*. *Eavestaff* v. *Austin*. vol. 19, p. 591

ABATEMENT OF PURCHASE MONEY.

[*See* SPECIFIC PERFORMANCE WITH COMPENSATION.]

ABSCONDING DEFENDANT.

[*See* PROCESS.]

1. A Defendant who had absconded "to avoid service of legal process." Held to be within the 31st Order of May, 1845 (Ord. x. 6), and service of process by notice in the *London Gazette* was directed. *Barton* v. *Whitcombe*. vol. 16, p. 205

2. Where a Defendant had absconded, and the Plaintiffs were unable to serve a *subpœna* to hear judgment, liberty was given to advertise notice in the *Gazette*, and upon which a foreclosure decree was made, on the non-appearance of the Defendant at the hearing. *Lechmere* v. *Clamp*. (No. 2.) vol. 30, p. 218

3. An appearance had been entered for an absconding Defendant. Liberty was given to advertise in the *Gazette* the notice of having filed a replication. *Lechmere* v. *Clamp*. vol. 29, p. 259

ABSENT PARTIES.

[*See* SUING ON BEHALF OF, &c.]

ABSOLUTE INTEREST.

[*See* LIFE ESTATE, LIMITATION OF GIFT, SUCCESSIVE INTERESTS.]

1. A testator directed his trustees "to raise 6,000*l.* for his daughter," and to invest "his said daughter's *legacy*" and pay the interest to her for *life*, for her separate use, and not to be under the control of any husband, with remainder to her *children* absolutely; and he gave her the power of appointing a life interest to her husband. The will contained no ultimate limitation of the property, but charged the legacy on the real estate in case of a deficiency of the personalty. Held, that subject to the interests given to the children, the daughter took an absolute interest, and having died unmarried, that her personal representatives were entitled thereto. *Meyer* v. *Townsend*. vol. 3, p. 443

2. A testator, resident abroad, gave a legacy to *A.*, "or in case of his decease, to be equally divided amongst his *children*." He gave other *legacies* in similar terms to *B.*, *C.*, &c., and he directed these sums to be paid to the above persons, then residing in Wales, and he appointed executors in trust to send them to the respective individuals within six months. Held, that the parents took absolute interests. *Arthur* v. *Hughes*. vol. 4, p. 506

3. A testator gave a fund, subject to the life interest of his wife, to *A.*, *B.*, and *C.*, equally to be divided between them; "but in case of the decease of *C.* without leaving lawful issue," he gave her one-third between *A.* and *B.* Held, that upon the decease of the wife, *C.*, who was then living, became absolutely entitled to one-third of the fund. *Barker* v. *Cocks*. vol. 6, p. 82

4. Devise of *leaseholds* on trust for *A.* for life, and afterwards to his *issue* male severally and respectively, according to their seniorities, and in default to his heirs according to their seniorities, and in default, over. Held, that *A.* took an absolute interest. *Jordan* v. *Lowe*. vol. 6, p. 350

5. Bequest of 2,000*l.* to *A.*, and in the event

of her *death without children*, to her heirs, the nearest relations of her grand aunt *A.* Held, that *A.* took an absolute interest. *Yearwood* v. *Yearwood.* vol. 9, p. 276.

6. A testator bequeathed his residue to his three sons, in trust, to be divided between his three sons and his daughter, and he directed his daughter's share to be kept in the hands of his sons, *for her "or" her children's* sole use, free from the control of her husband. The daughter survived. Held, that she took absolutely. *Whitcher* v. *Penley.* vol. 9, p. 477
7. A testator gave fourteen Phœnix *shares* on trust, to pay the produce of ten to his daughters for life, and afterwards to his son, and afterwards to the son's "children;" and he gave the other four shares to his son for life, and afterwards to his "children;" and, in default, of "such issue" of his son, he gave all the shares to his "*daughters*" and their "*issue*" share and share alike, such issue not to be entitled to or take more than their deceased parent's share. The son died without issue. Held, that the daughters took absolute interests, and that their children took only by way of substitution for their parents, and not by way of limitation or succession. *Hedges* v. *Harpur.* vol. 9, p. 479
8. Bequest to a daughter of 1,000*l.* stock and 70*l.* a year for life, which two sums were to be under the trust of the executors, and not to permit her to assign "her said annuities," and pay the interest from the 1,000*l.* to her for her life, and at her decease, to *divide* it between her *children.* Held, that the daughter took for life only and not an absolute interest, subject to be defeated by the interests given to her children. *Scawin* v. *Watson.* vol. 10, p. 200
9. Distinction between an absolute bequest with a subsequent gift in derogation, and a limited bequest followed by a subsequent restricted gift over. In the former case, the absolute gift remains, upon failure of the subsequent gift, but in the latter the limited bequest is not enlarged by such an event. *Ibid.*
10. By settlement, *personal estate* was limited, after the death of the husband and wife, in trust for all the *children* as tenants in common, *and* the several *issue* of the body of such children; and, failing issue of any such children, their shares to the use of the surviving children, as tenants in common, and the issue of their bodies. There was a gift over, in case there should be no issue of the marriage, or any issue of such issue, or, being such, all should die before their shares should become payable. Held, that the children of the marriage took absolute interests, and that the representatives of a child who died an infant, without issue, in the life of his parents, were entitled to a share. *Mount* v. *Mount.* vol. 13, p. 333
11. Bequest of personalty to a woman for life, with a power to appoint at her death. Held, an absolute gift. *Cambridge* v. *Rouse.* vol. 25, p. 574
12. Bequest to a woman of the dividends of a sum of stock for her separate use, with a direction that at her death she might leave it to her children, or whom she might choose. Held, an absolute gift, and that she was entitled to payment. *Southouse* v. *Bate.* vol. 16, p. 132
13. A testator gave the residue of his estate to trustees, upon trust to permit his wife to receive the rents, issues and profits, and carry on his trade for *her own benefit*, and to enable her to bring up, maintain, and educate his children, *durante viduitate.* Held, that the wife was absolutely entitled to the business. *Jones* v. *Greatwood.* vol. 16, p. 527
14. A testatrix by her will directed her executors to pay to *M. S.* or her assigns, or permit her to *receive the income* of her residuary personal estate after payment of debts, and she then bequeathed certain legacies payable after the death of *M. S.* By a second codicil, she gave a legacy payable after the death of *M. S.* Held, that *M. S.* took an absolute interest in the residuary personal estate. *Jenings* v. *Baily.* vol. 17, p. 118
15. Bequest "to *A.*" (who was *enceinte* at the time) "and her children." Held, that *A. and her children* took as joint tenants, and, no child having survived the testator, that *A.* was absolutely entitled to the legacy. *Mason* v. *Clarke.* vol. 17, p. 126
16. A bequest by a testator of 100*l.* to his wife, "for her present expenses of herself and the children." Held to be an absolute gift to the wife. *Hart* v. *Tribe.* vol. 18, p. 215
17. A testatrix bequeathed as follows:—I will to *S. B.*, "if living, *the interest* of my property in the 3½ per cents.; and if not living at my decease, I will the interest of that property" to *E. S.* for life, and afterwards to be divided amongst her children. Held, that *S. B.* took an absolute interest, and that the gift over only took effect in the event of *S. B.* predeceasing the testatrix. *Boosey* v. *Gardner.* vol. 18, p. 471
18. Bequest of *personalty* to trustees for a lady, to be *paid* at twenty-one, with a direction to settle her share on her for life, and afterwards on her children. The age of *A.* rendering it impossible that she should have children: Held, that the absolute interest, given to her in the first instance, remained intact, and that she was entitled to payment. *Lyddon* v. *Ellison.* vol. 19, p. 565
19. A testator bequeathed his residuary

estate to his wife, "her executors, administrators and assigns," but if she died intestate, then his will was, that it should be bequeathed to *A.* and *B.* The wife predeceased the testator. Held (independently of that circumstance) that the gift over, after an absolute interest, was void. *Hughes* v. *Ellis.* vol. 20, p. 193

20. The testator devised his real and personal estate to trustees to convert and invest, and pay the income to his daughter for life, and after her decease, to divide the fund among "all her children then living," provided all such children may then have attained twenty-one; if not, he directed the fund to be placed out at interest, and the interest, &c. to be applied for the maintenance and bringing up of all such children, until the youngest should attain twenty-one, when the fund was *to be divided* amongst such children as should be then living and the issue of such of them as should be dead, the issue to take their parent's share. Held, that a child who survived the mother, attained twenty-one, but died before the youngest attained twenty-one, took an absolute *vested* interest. *Brocklebank* v. *Johnson.* vol. 20, p. 205

21. A testator, by virtue of a power, appointed a fund to trustees for his four children, in four equal portions and subject to the trusts thereinafter contained respecting his own residuary estate. Some of those trusts were to the children for life, with remainder to their children, and (as regarded the fund subject to the power) the appointment to grandchildren was void for remoteness. Held, that the children took absolutely in the first instance, and that the subsequent attempt to *limit* the absolute gift being void, the children took the fund absolutely. *Stephens* v. *Gadsden.* vol. 20, p. 463

22. A testator gave a fund to *A.* for life, and afterwards to his surviving children, but if he died without any, he gave one-half of it "to be disposed of as *A.* should think proper." The son never married. Held, that he took an absolute interest in the one-half, and not a life interest, with a power of appointment. *In re Maxwell's Will.* vol. 24, p. 246

23. Bequest of 1,000*l.* to a married woman for her own use, nevertheless, during her life, to pay *the dividends*, during her life, for her separate use, independent of any husband. Held, an absolute interest. *Gurney* v. *Goggs.* vol. 25, p. 334

24. Appointment to *A. B.* (an object of a power), to be settled for her separate use, and to be divided, *at her death*, amongst her children. The gift to the children being void, they not being objects. Held, that *A. B.* took for life only, and not an absolute interest ineffectually attempted to be cut down. *Reid* v. *Reid.* vol. 25, p. 469

25. A testator devised real and personal estate to *A.* for life, with a direction to the executors, after *A.*'s death, to divide it amongst all her children and their lawful *issue*, share and share alike. There was a gift over of the leaseholds to other persons on a total failure of issue of the children. Held, that the children took estates in tail in the realty, and absolute interest in the personalty, and that cross remainders were not to be implied in regard to the leaseholds. *Beaver* v. *Nowel.* vol. 25, p. 551

26. A testator directed that, as his sons attained twenty-five, his executors should pay them a share of his estate and effects, it being his will that his sons and daughters should receive equal shares of his estate. And as his daughters attained twenty-five, the executors were to invest 1,000*l.* each for them for life, and to pay the difference between this and their share to them. In case any daughter "should die without *issue*," the 1,000*l.* was to be divided "amongst such of his children as might be then living, and the issue of such as might be dead, share and share alike," the issue to take the like share as the parent would, if living, have been entitled to. Held, that the gift over was on an indefinite failure of issue; that there was an absolute gift of the 1,000*l.* in the first instance to the daughters, which had not effectually been cut down, and that the daughters were absolutely entitled to the 1,000*l.* *Webster* v. *Parr.* vol. 26, p. 236

27. Bequest of personalty to four daughters "and their issue." Held, that they took absolutely. *Re Stanhope's Trusts.* vol. 27, p. 201

28. A testator gave the interest of all his money in the funds to his daughter *C. S.*, and he desired his outstanding money to be put into the funds. He then desired the interest of the moneys directed to be put into the funds to be paid to his daughter *C. S.*, "as and for her own and issue's proper moneys." But in the event of her dying without *issue*, he desired the whole of his funded property to be divided between his brothers and sisters and their children. *C. S.* died without issue. Held, that she took the funds absolutely, and that the gift over was inoperative. *Re Andrew's Will.* vol. 27, p. 608

29. A testator bequeathed his residue to his wife, "with power for her to dispose of the same" amongst his children, or any of them, for such interest, temporary or lasting, as she should see most fitting. Held, that the wife took absolutely. *Howorth* v. *Dewell.* vol. 29, p. 18

30. A testator directed his executors to raise a legacy "to or in trust for his son." It was to be invested in the names of trustees, and life annuities were given to

the son and his wife out of the income, and interests were given to the children of the son and to their issue, with gifts over. Held, that there was an absolute gift to the son *cut down* to the limited extent of the subsequent gifts. *Salmon* v. *Salmon*. vol. 29, p. 27

31. Bequest of a residue to the testatrix's father, "to spend both principal and interest or any part of it during his lifetime;" should he "not *spend* the property," then in trust for the testatrix's sisters. Held, that the bequest to the father was absolute, and that the gift over was inconsistent with it and inoperative. *Henderson* v. *Cross*. vol. 29, p. 216

32. A testator bequeathed leaseholds to trustees, upon trust to pay the rents to his daughter for her separate use [without limit], but in case she should die before the expiration of the lease, then upon trust to accumulate the rents for her children. She *never had any children*. Held, that she took the whole interest in the leaseholds. *Watkins* v. *Weston*. vol. 32, p. 238

33. Bequest of "the use of the book debt or capital" employed in the testator's trade at his death. Held, upon the context, to pass the absolute interest therein. *Terry* v. *Terry*. vol. 33, p. 232

34. Bequest to *A. B.*, an unmarried lady, for life, for her separate use, with remainder to her children, and in default to her absolutely if she survived her husband, but if she should die in his lifetime, then as she should appoint by will, and in default for her next of kin. *A. B.* died without ever having married. Held, that in the events which had happened *A. B.* took an absolute interest, and that her executors were entitled to the legacy. *Brock* v. *Bradley*. vol. 33, p. 670

35. A testator gave an absolute interest to a married daughter, and afterwards superadded a direction to accumulate the fund during the life of her husband for the benefit of herself and her children. The direction to accumulate becoming void at the end of twenty-one years. Held, that the daughter was entitled absolutely to the subsequent income until the death of her husband. *Coombe* v. *Hughes*. vol. 34, p. 127

36. Leaseholds were by deed conveyed to trustees, in trust for the settlor for life, and after her decease in trust to assign them to *Thomas*, his executors, &c. "absolutely." But if *Thomas* should die without leaving any child living at the time of his decease, then in trust to assign to *Philip*, &c. &c. Held, on the context, that the death referred to was not confined to a *death in the life* of the tenant for life, and that *Thomas* did not, upon the death of the settlor, become absolutely entitled to the leaseholds. *Milner* v. *Milner*. vol. 34, p. 276

37. Bequest of an *annuity* to *A.* and *B.*, and to the survivor for life; and if *A.* should have any "children," then to be equally *divided* between them; but if *A.* should die "without lawful issue," then to *B.* and his heirs for ever. Held, that the children of *A.* took absolute interests in a perpetual annuity. *Robinson* v. *Hunt*. vol. 4, p. 450

38. A testator gave his personal and landed estates to *A.* for life, and afterwards to *B.* for life, and then to the eldest son of *C.*, and afterwards to his second, third, or any later sons he might have by *D.*, and then to the eldest son and other sons successively of *E.*; but all these to be subject to the out payments and legacies following. The testator declared, "that if the legacies and conditions of his will were not complied with exactly, then he left all the advantages of it to the next person in succession, subject to those legacies, and so on, unless they were discharged." He gave many legacies and annuities by thirteen codicils, which, if not paid, those who were to inherit his personal estate were to be subject to the penalties in his will, and his personal estate was to go to the next he had entailed it on. *C.* had several sons. Held, that subject to the prior life estates, the eldest son of *C.* took the personal estate absolutely. *Byng* v. *Lord Strafford*. vol. 5, p. 558

39. The first legatee of a *quasi* estate *tail* in *personalty* takes the absolute interest, notwithstanding a manifest and avowed intention to give a succession of limited interests. *Ibid.*

40. If an absolute interest be given upon an express condition, which may be lawful in itself but is incompatible with the free enjoyment of the property, the Court does not modify the absolute interest, for the purpose of giving effect to the condition, but declares the condition void for the purpose of supporting the absolute interest. *Ibid.*

41. If a testator were to give all his estate to *A.* in fee, and then to *B.* in fee, and afterwards to *C.* in fee, or to give all his personal estate to *A.*, and then to *B.*, and afterwards to *C.*, there is no rule of construction authorizing the Court to restrict the estate given to *A.* to a life interest for the purpose of giving effect to the gifts to *B.* and *C.* *Ibid.*

42. Absolute interest *cut down* to a life interest for a limited purpose, held to remain absolute upon failure of that purpose. *Winckworth* v. *Winckworth*. vol. 8, p. 576

43. A testator bequeathed his residuary estate, in terms which, in the first instance, gave absolute interests to his children, but he directed that half only of his daughters' shares should be transferred to his daughters at twenty-one or marriage, and the other settled on them

for life, with remainder to their children. There were gifts over in events which did not happen. A daughter attained twenty-one and died without having been married. Held, that, as to her moiety directed to be settled, she had an absolute interest, subject to the rights of her children, and there being none, her representatives were entitled to that moiety. *Winckworth* v. *Winckworth.* vol. 8, p. 576

44. A testator gave the income of his property to *F.* and two other persons successively for life, and on the death of the survivor, he gave all his property to the eldest son then living of *W.*, his executors, administrators and assigns. *W.* had three sons, of whom *W. W.* was the eldest. The testator by a *codicil* revoked so much of his will as related to *W. W.*, "and left *F.*, on the death of the tenants for life, in the full enjoyment of all his property." Held, that the gift to *F.* in the codicil enlarged his life estate into absolute ownership, and being inconsistent with the gift to the eldest son of *W.*, revoked it, whether the revocation of the gift to *W. W.* operated as a revocation of the gift to the "eldest son of *W.*" or not. *Wells* v. *Wells.* vol. 17, p. 490

45. A testator bequeathed one-third of his residue to his daughter, her executors, &c., to be vested at twenty-one, but not to be payable until twenty-five. He declared it should not be subject to the control of any husband, but should devolve and be settled by deed upon her as a *feme sole*, and that the income should not be anticipated; and that until her marriage she should only be entitled to receive the dividends and retain the *power to bequeath* the capital by will. The daughter being unmarried. Held, that she took absolutely, and was entitled to payment of the fund out of Court on attaining twenty-one. *Re Young's Settlement.* vol. 18, p. 199

46. A bequest to *F. P.* of 60*l.* a year out of the 4*l.* per cent. bank stock, followed by a direction that it was not to be sold till after the death of *F. P.* and his wife, nor until his youngest child should attain twenty-one, is in point of duration a perpetual annuity, and *semble* is an absolute gift to *F. P.* *Pawson* v. *Pawson.* vol. 19, p. 146

See ANNUITY.

47. Bequest of residuary personal estate in trust for testator's wife for life, and on her death to pay, &c. to his son *C. A.* on his attaining twenty-one. But if he should depart this life before the wife "or" before attaining twenty-one, then in trust for the Defendants. Maintenance to, and a power to advance *C. A.* were also given. *C. A.* attained twenty-one, but died in the wife's lifetime. Held, that "or" was to be read "and," and that the son took an absolute vested interest on attaining twenty-one. *Bentley* v. *Meech.* vol. 25, p. 197

See "OR" READ "AND."]

48. Where there is an absolute appointment to *A.*, an object of the power, followed by a qualification limiting the interest of *A.* to a life interest, with remainder to persons not objects of the power, the latter being void, *A.* takes absolutely under the prior appointment. *Gerrard* v. *Butler.* vol. 20, p. 541

49. A testatrix, having a power to appoint a fund to her children, appointed it in this form: "Amongst my children, *A.*, *B.*, *C.* and *D.*, the share of *A.* to be upon the trusts of her marriage settlement, and to be paid to the trustees thereof." *A.* was the only person in the marriage settlement within the power. Held, that she took her share absolutely. *Ibid.*

50. A testator made an indefinite bequest of the interest of his residue to a class of children equally, with a declaration that they should have the *right to will* away their shares on their deaths. There was a gift over, if they should omit to make their wills. Held, that they took absolute vested interests, and not a life interest, with a power to bequeath, and that the gift over was void for repugnancy. *Weale* v. *Ollive.* vol. 32, p. 421

ABSTRACT.

1. All objections to a title were to be taken within twenty-one days from the delivery of the abstract, or be deemed waived, and time was, in that respect, to be considered the essence of the contract. Held, that the twenty-one days did not begin to run until a perfect abstract had been delivered. *Hobson* v. *Bell.* vol. 2, p. 17

2. The costs of an abstract of a deed prepared to accompany a case submitted to counsel disallowed under the circumstances. *In re Pender.* vol. 10, p. 390

3. In taxation, abstracts are ordinarily passed if they contain eight folios on an average; but the strict rule is, that they should contain ten folios. *In re Walsh.* vol. 12, p. 490

4. Taxation of a paid bill sought on the ground of overcharge in abstracts containing less than ten folios refused, the practice being in uncertainty and there being no pressure or surprise. *Ibid.*

5. Explanatory notes of the Taxing Master as to the charge for abstracts, &c. &c. *Ibid.*

6. A bill by an incumbrancer of an alleged remainderman against the tenant for life for production of the title-deeds, and involving questions of title, was dismissed with costs. Upon the taxation, a charge

was made for an abstract of title-deeds. Held, that the word "abstract" was intentionally omitted from the 120th General Order of *May*, 1845 (Ord. xl. 32), and that the charge for the abstract could not be allowed if it exceeded that of a copy of the documents; secondly, that no such charge could be allowed for an abstract made before the suit, though with a view to an arrangement between the same parties; but thirdly, that a copy of it for the use of the counsel who prepared the answer might be allowed. *Davis* v. *Earl of Dysart.* (No. 2.) vol. 21, p. 124

7. A second fair copy of abstract is not allowed except under special circumstances, as when the notes of counsel render the copy laid before him wholly unfit to go to the purchaser. *Ramsey* v. *Ramsey.* vol. 21, p. 40

ACCELERATION.

1. A testator devised an estate to *A.* for life, and from "and immediately after his decease" to *B.* in tail. By a codicil, he revoked the devise to *A.*, and in lieu gave him an annuity. Held, that there was no intestacy as to *A.*'s life estate, so as to entitle *A.* (the heir) to take it as undisposed of, but that *B.*'s estate was accelerated. *Lainson* v. *Lainson.* vol. 18, p. 1

2. The testatrix directed so much of a sum of money as would produce 100*l.* a year to be set apart, and the 100*l.* a year paid to *A.* for life, and that after her death the capital should be divided among the children of *B.* By a codicil she revoked the bequest of the 100*l.* a year to *A.* Held, that the gift to the children of *B.* was thereby accelerated. *Ravestaff* v. *Austin.* vol. 19, p. 591

3. An appointment was made to a person not an object of a power, with remainder to an object. The first appointment being void, it was held, that the second was not accelerated, but failed with the first. *Reid* v. *Reid.* vol. 25, p. 469

4. The *contingent* estate of a remainderman was not allowed to be accelerated, for the purpose of giving him a right to rent accrued prior to the time when his estate took effect. Where, therefore, an estate was limited to the children of *A.*, born within fifteen years, with remainder to the Plaintiff, and *A.* had no child, but the fifteen years had not expired, it was held, that the Plaintiff had no right to the present rents. *Sydney* v. *Wilmer.* vol. 25, p. 260

5. An estate was devised to trustees for 500 years, with remainder to persons still unborn, with remainder to the Plaintiff. The trustees had active duties as to the management of the estate and large discretionary powers, and they were authorised, "during the minority of any person absolutely or presumptively entitled," to apply the surplus income for the benefit of such person, accumulating the surplus. Held, that the Plaintiff, who had attained her majority, had no right to any part of the surplus rents accruing prior to her estate becoming vested in possession. *Sydney* v. *Wilmer.* vol. 25, p. 260

6. *A. B.* who was tenant for life, with remainder to his issue in tail, forfeited his estate before he had any issue. Held, upon the intention apparent on an *executory* instrument, that the next remainderman thereupon became entitled to the rents until *A. B.* died or had issue. *D'Eyncourt* v. *Gregory.* vol. 34, p. 36

7. Bequest of a moiety of a residue to *A.* for life, and of the other moiety to *B.* for life, "and from and immediately after" the decease of *A.* and *B.* to stand possessed "of all my personal estate" in trust for eight grandchildren. *A.* died and *B.* was living. Held, that the moiety enjoyed by *A.* became immediately divisible amongst the grandchildren. *Sarel* v. *Sarel.* vol. 23, p. 87
Turner v. *Whittaker.* vol. 23, p. 196

8. Distinction between accelerating powers to charge and powers of sale. *Truell* v. *Tyson.* vol. 21, p. 437

ACCEPTANCE OF TITLE.

[*See* WAIVER.]

1. Where a purchaser accepts the title, he is only bound to the extent to which he has been made cognizant of it. *Bousfield* v. *Hodges.* vol. 33, p. 90

2. A purchaser having retained the abstract for some time, made no objections to the title, but simply required the vendor to verify the abstract with the title-deeds. Held, that he must be deemed to have accepted the title. *Pegg* v. *Wisden.* vol. 16, p. 239

3. *Primâ facie* taking possession, after an abstract has been delivered, is a waiver of the objections appearing on the abstract. *Bown* v. *Stenson.* vol. 24, p. 631

4. Taking possession of a mine by intended lessee held not to be an acceptance of the title. *Haywood* v. *Cope.* vol. 25, p. 140

5. Even after great delay and acquiescence, the Court will not compel a purchaser to complete, if the title appears to be manifestly bad. *Blackford* v. *Kirkpatrick.* vol. 6, p. 232

ACCIDENT.

[*See* BREACH OF TRUST, 42; LOST INSTRUMENT.]

ACCOUNT.

[*See* DISCOVERY, MORTGAGOR AND MORTGAGEE (ACCOUNTS), PARTNERSHIP (ACCOUNTS).]

1. It is not necessary for a Plaintiff in a bill for an account, to submit to account himself; a demurrer on the ground of the omission of such a submission was therefore overruled. *Clarke* v. *Tipping*. vol. 4, p. 588
2. The Court refused to open accounts, though of a general and summary nature, not containing the items, which had been rendered by a surviving partner to the representatives of a deceased partner, and had remained unquestioned for twenty-two years, but it decreed an account limited to the subsequent receipts of the surviving partner which it was admitted had taken place. *Scott* v. *Milne*. vol. 5, p. 215
3. Where a bill for an account which relies on certain items as the ground for transferring the matter from the jurisdiction of a court of law to that of equity, also contains a general vague charge of there being voluminous and intricate accounts between the parties; then, if the Plaintiff fails in supporting his equity upon the particular items, he cannot maintain the bill against a demurrer upon the latter vague charges. *Darthez* v. *Clemens*. vol. 6, p. 165
   Padwick v. *Hurst*. vol. 16, p. 575
4. A husband carried on the business of a victualler with stock, &c. which formed the separate estate of the wife; in carrying on the business he disposed of the consumable stock, and substituted similar articles, and at a subsequent period he sold the stock and business. By the decree an account was directed against the husband of the stock comprised in the settlement and sold. Held, that the Master properly included the substituted stock in the account. *England* v. *Downs*. vol. 6, p. 269
5. In charity informations, the account is sometimes carried back to the date of the report of the charity commissioners, sometimes it is directed from the filing the information, and sometimes from the decree, according to the circumstances of each case. *The Attorney-General* v. *The Drapers' Company*. vol. 6, p. 382
6. Partnership accounts having been directed to be taken by the Master, in a case in which some of the books had been lost, the Court directed the Master, if it should appear in taking the account that any necessary books, &c. should be wanting, to report the same specially; and whether, in consequence of the *want of* such *books*, he was unable to proceed satisfactorily in taking the accounts. *Millar* v. *Craig*. vol. 6, p. 433
   See *Turner* v. *Corney*. vol. 5, p. 515
7. Difficulty in making a decree against parties, depending on the result of accounts, which could not be satisfactorily taken, in consequence of the loss of the books of account. *Rowley* v. *Adams*. vol. 7, p. 395
8. A testator gave large legacies out of his "surplus capital." By the decree special accounts and inquiries were directed; but the Master was unable to take the accounts, by reason of the non-production of the books. He found, however, on the imperfect evidence before him, large sums due to the testator, and large partnership assets, which, however varied in each of his three reports: he also found that the executors might, with due diligence, &c., have possessed themselves, out of the partnership property, of sufficient to pay the two legacies. The Court, however, was of opinion, that there was no reason for thinking that the testator's surplus capital could, if at all, have been realized without putting an end to the business, which the executors, under the circumstances, were not bound to do; that though the executors had not fully or properly performed their duty, still it was more a matter of conjecture than of proof what the assets and liabilities were: that the results were not accurate or approaching to accuracy, and that it had not been satisfactorily made out, either that there were partnership assets, out of which the legacies could have been recovered or secured, nor that the assets were such as to make it impracticable for the executors to obtain payment of the legacies. The Court, in this state of things, declined to charge the executors. *Ibid.*
9. A builder entered into a contract to build an union workhouse on certain specified terms, but became bankrupt before it was completed, and it was finished by the guardians. A bill by the assignees to have an account taken of what had been done was dismissed with costs, on the ground that it was not a proper subject for a suit in equity. *Ambrose* v. *Dunmow Union*. vol. 9, p. 508
10. Under a decree to take an account of the testator's debts, and to compute interest on such of his debts as carried interest, the Master has not jurisdiction to allow a compensation to a party for unliquidated damages on a breach of covenant; but, upon an application to the Court, proper directions will be given for the investigation of such a claim. *Cox* v. *King*. vol. 9, p. 530
11. A person died intestate. His brother took out administration, and placed himself in *loco parentis* to the intestate's children. One of them attained twenty-one in *September*, 1823, and, in *May*, 1825, came to a settlement of account with the administrator, which he signed

and confirmed, and, in *January*, 1828, he received his share of the estate. In *September*, 1843, he filed a bill to open the account. Many errors were shewn to exist in the account, some of the items of which appeared to be fictitious; and, although forty years had elapsed since the death of the intestate, twenty years since the Plaintiff attained twenty-one, seventeen years since the settlement of the account, and more than two since the discovery of the errors, yet the Court, having regard to the nature and extent of the errors, the relation between the parties, and the influence of the administrator over the Plaintiff, refused to limit the relief to a right to surcharge and falsify the account, but set it aside altogether, and directed the accounts to be taken, with special inquiries. *Allfrey* v. *Allfrey*. vol. 10, p. 353

12. The fact of a person receiving money for his principal, and paying money for him or to him, and lending him money, where the account consists simply in receipts and payments by the agent, to or on behalf of the principal, does not constitute a case of mutual accounts, so as to justify the agent in filing a bill against his principal for an account. *Padwick* v. *Hurst*. vol. 18, p. 575

13. An agent is liable to account only to his principal, and the case of a charity forms no exception to the rule. *The Attorney-General* v. *The Earl of Chesterfield*. vol. 18, p. 596

14. The trustee of a charity managed its affairs by an agent, who received the income, and had the title-deeds in his possession. The agent was made a party to an information for an account and a scheme. Held, on demurrer, that he was not a proper party. *Ibid.*

15. Where a wrong has been committed, the wrong-doer must suffer from the impossibility of accurately ascertaining the amount of damage. Therefore where an account of the equitable waste committed by a tenant for life was directed to be taken against his executors, which it was found impossible to take accurately, and the Master had arbitrarily charged the executors, his report was supported. *The Duke of Leeds* v. *The Earl of Amherst*. vol. 20, p. 239

16. *A. B.* who was both heir and administrator, gave to a creditor of the intestate a mortgage on the descended estate for his debt, which he covenanted to pay. The creditor thereupon gave to *A. B.*, as administrator, a receipt for the debt, but no money passed. Held, in taking an account of the personal estate of the intestate as against *A. B.*, that he was entitled to charge the amount of this debt as a payment out of the personal estate. *George* v. *George*. (No. 2.) vol. 35, p. 382

17. A large shareholder was the manager of the affairs of a company. He rendered accounts regularly from 1826 to his death in 1851. These accounts were not challenged in his life, but after his death items exceeding 2,000*l.* a year were questioned by the company, for which no vouchers could be produced, and no satisfactory explanation given. The account was opened for the whole period of twenty-five years, and it was directed to be taken with special directions. *Stainton* v. *Carron Company*. vol. 24, p. 346

18. The alteration of account-books *post litem motam* is a most serious and reprehensible circumstance. *Pole* v. *Leask*, *Leask* v. *Pole*. vol. 28, p. 562

19. A bill by one of several projectors of an abortive company against his co-projectors for repayment of monies expended by him in attempting to carry out the project cannot be maintained; the bill should pray a general account of the expenditure and a due adjustment between all the projectors. *Denton* v. *Macneil*. vol. 35, p. 652

20. Where by underground working the Defendant had taken the coal of his neighbour, the Court limited the account to six years, but intimated that the amount wrongfully abstracted being proved, the *onus* of proof would lie on the wrongdoer to show that it was not taken within the six years. *Dean* v. *Thwaite*. vol. 21, p. 621

21. *Semble*, the account would not be so limited, if the coal had been abstracted intentionally, and steps had been taken to conceal the fact and prevent discovery. *Ibid.*

22. An author agreed with a publisher for the publication of 500 copies of his work. The work was published and an account was rendered, presenting no intricacy. After an action brought by the publisher for the balance, a bill was filed by the author to have the account taken in equity, specifying no error and alleging no fraud. A demurrer was allowed. *Barry* v. *Stevens*. vol. 31, p. 258

ACCOUNTANT.

The scale of charges allowed by the general order in bankruptcy for an accountant and his clerks adopted in taking accounts in chambers. *Meymott* v. *Meymott*. vol. 33, p. 590

ACCOUNTANT-GENERAL.

1. A cheque of the Accountant-General was alleged to have been accidentally destroyed: the Court, though not satis-

fied with the evidence of its destruction, directed the issue of a new cheque, on the ground that the other cheque, being more than a year old, would not be paid if presented. *Taylor* v. *Scrivens.* vol. 1, p. 571

2. Where a matter is pressing, the accountant-general will grant his direction to pay money into the Bank *instanter*. *Foley* v. *Smith.* vol. 13, p. 113
3. Prospective order for payment by the accountant-general to the tenant for life of the income of funds hereafter to be paid into Court, to the same account. *In re Chamberlain.* vol. 22, p. 286
4. Accountant-general ordered to pay the income of a fund in Court to the vicar of *S.* for the time being. *In re Pearce.* vol. 24, p. 491

ACCRUER.

[*See* CROSS REMAINDERS, REFERENTIAL TRUSTS.]

1. Accruing share held to go over with the original share by force of the words "part share and interest." A testator gave his estate to one for life, with remainder to her children equally, with a gift over (in case of the death of any child in the life of the tenant for life), of the "part and parts, share and shares and interest" of such child to his issue. Held, that the gift over comprised the accrued as well as the original share. *Douglas* v. *Andrews.* vol. 14, p. 347
2. The general rule is, that where a fund is given to a class of persons, with a direction that on the death of any of them their "shares" are to go over, the original and not the accruing shares will go over. But a testator may express a contrary intention thus:—where he shews an intention to keep the fund "aggregate" and unsevered, the rule does not apply. *Ibid.*
3. Bequest to four equally, "and as each dies, his or her part shall be equally divided amongst the others that's living." Held, that the accrued shares did not go over. *Goodwin* v. *Finlayson.* vol. 25, p. 65
4. The word "share" alone, when there is no gift over of the whole fund, in case of the failure of all the members of the class, is not sufficient to carry over an accrued share. *Evans* v. *Evans.* vol. 25, p. 81
5. "Shares" directed to go over, Held, to include accrued shares, from the circumstance of there being, in the will, an intention, plainly shewn, of keeping the estate together, so as to go over ultimately in one aggregate mass. *Dutton* v. *Crowdy.* vol. 33, p. 272
6. A testator gave his estate to his wife and his four children in equal proportions; but his wife was to have "her proportionate part" for her life, and it was given afterwards to the four children. And as to "the part of his estates," thereinbefore given to his daughter, she was to have it for life, with remainder to her children. Held, that the "part" of the daughter included her share in the part given to the wife for life; and that, therefore, she was only entitled to a life interest in it. *Watson* v. *Pryce.* vol. 34, p. 71

ACCUMULATION.

1. The Thellusson Act (39 & 40 *Geo.* 3, c. 98), which permits accumulation during a minority does not permit it between the death of the testator and the commencement of the minority. *Ellis* v. *Maxwell.* vol. 3, p. 587
2. The Thellusson Act does not permit accumulation in favour of any person who would not, for the time being, if of full age, be entitled to the annual produce of the fund. *Ibid.*
3. A testator directed the accumulation of the whole of his personal estate for the benefit of his grandchildren; and he gave to his wife "any thing which he might not have sufficiently disposed of." Held, that the accumulations of the fund, which were void under the Thellusson Act, belonged to the widow, notwithstanding that the grandchildren took vested interests. *Ibid.*
4. A testator bequeathed leaseholds in *Church Street*, having sixty years unexpired, and as to which there was no obligation on the part of the lessor to renew, to *A.* for life, with remainder to the children she should leave, and in default to *B.* He bequeathed to trustees other leaseholds, upon trust to accumulate the rents, until the leases of the *Church Street* property "should become nearly expired;" and then to apply such part thereof as should be necessary in the renewal of the *Church Street* property, "for the benefit of the respective persons to whom he had before, by his will, given the same;" and the residue, after answering the purpose aforesaid, he gave to his residuary legatees. The testator died before the Thellusson Act came into operation. Held, that the trust for accumulation and renewal was void for remoteness and uncertainty. *Curtis* v. *Lukin.* vol. 5, p. 147
5. Trustees were to accumulate a residue for a class of children, after maintaining them. Held, on the context, that after one attained his age and received his

share, he retained no interest in the subsequent accumulations. *Routh* v. *Hutchinson.* vol. 8, p. 581

6. Devise in trust for *A.* for life, with remainder to any of his children, as he should appoint. At the date of the will *A.* had no child, but at the death of the testator he had a son, *B.*, three years old. *A.* by will, appointed the property to two trustees and their heirs, in trust for *B.* and his heirs, *and* to be conveyed to him at twenty-three, with a gift over to other sons if *B.* died under twenty-one; and he directed the rents to be accumulated until *B.*, or such other sons, should attain twenty-three, and then to pay them over. Held, that the gift was not too remote, and that the direction to accumulate was valid. *Peard* v. *Kekewich.* vol. 15, p. 166
7. Under a trust during twenty-one years, to accumulate until the same "should amount to the aggregate sum or value of 25,000*l.*" and then invest it in land, the value of part of the property being variable, it was held, that the trust for accumulation ceased on the day the funds, if realized, would produce 25,000*l.* *Huskisson* v. *Lefevre.* vol. 26, p. 157
8. Where a testator directs the accumulation of a fund to commence at a time subsequent to his decease, the accumulation becomes void at the expiration of twenty-one years from his decease, although at that period there has been on the whole less than twenty-one years of accumulation. *Webb* v. *Webb.* vol. 2, p. 493
9. A testator gave annuities to *A.* and *B.* respectively, charged on money in the funds; and he directed that when either died, the annuity should accumulate until the death of the survivor. *A.* died some time after the testator; *B.* being still living. Held, that the accumulation must cease at the expiration of twenty-one years from the testator's decease, and not from twenty-one years from the decease of *A.* *Ibid.*
10. A testator devised his real estate to trustees in fee to accumulate until the youngest child of *A.* attained twenty-one, and then to divide it. After the expiration of twenty-one years, and before the youngest child attained twenty-one, the heir of the testator died. Held, that the forbidden accumulation subsequent to the heir's death, being in the nature of a chattel interest, passed to the personal representatives of the heir of the testator. *Sewell* v. *Denny.* vol. 10, p. 315
11. The rents of Irish estates were directed to be accumulated and become part of the personal estate. Held, that, although the Thellusson Act did not apply to Irish estates, yet that it applied to the rents, as invested from time to time, and that although the rents, which ought to be considered as corpus, might be invested for more than twenty-one years from the testator's death, yet that the income thereof could not. *Ellis* v. *Maxwell.* vol. 12, p. 104
12. By operation of law, an accumulation for more than twenty-one years may legally take place. *Bryan* v. *Collins.* vol. 16, p. 14
13. The scope and object of the Thellusson Act was directed against testator's making an accumulation of property beyond twenty-one years, but not against an accumulation, which, although not directed or anticipated by the testator, might take place by operation of law. *Tench* v. *Cheese.* vol. 19, p. 3
14. The Thellusson Act, as a disabling statute, has been construed strictly and not liberally. *Ibid.*
15. Where there is no "direction" to accumulate, the case does not fall within the Thellusson Act, although, by the nature of the limitations, the enjoyment is postponed, and an accumulation takes place beyond twenty-one years from the testator's death. *Ibid.*
16. A testator gave his real and personal estate to trustees, in trust to pay an annuity to *M.*, and if she should have children, to raise 4,000*l.* for the younger children, and he gave the residue, "with the accumulations, which he directed his trustees to place out on mortgage," upon trust for the eldest son of *M.*, on his attaining twenty-one and taking the testator's name, and if there should be no child of *M.*, then on trust for *E.*, upon attaining twenty-five, and taking the testator's name. At the expiration of twenty-one years from the testator's death, *M.* had no child. Held, that there was no direction to accumulate, that the case was not within the Thellusson Act, and that the accumulation must therefore go on until some person obtained a vested interest in possession in the property. *Tench* v. *Cheese* (reversed). vol. 19, p. 3
17. A testator gave a sum of stock, producing 180*l.* per annum, in trust to pay life annuities of 20*l.* each to seven persons, and at the decease of any, to accumulate his annuity, and after the death of the last annuitant, to divide the stock and accumulations amongst the surviving children of the annuitants. Held, that this was not within the exception of the Thellusson Act of "portions" for "children" of persons taking an interest under the will, and that the trust for accumulation beyond twenty-one years after the testator's death was void. *Drewett* v. *Pollard.* vol. 27, p. 196
18. The provision for payment of debts, excepted from the Thellusson Act, is not confined to debts existing at the date of the will or at the death of the testator.

Therefore where a testator made a bequest of four shares in a newspaper, to one for life, but he directed the income, beyond 200*l.* a year, to "be reserved, as a kind of sinking fund for the protection of those four shares." Held, that the accumulation was valid beyond twenty-one years from the testator's death, this being a provision for the debts of some "other person or persons" within the exception in the Thellusson Act. *Varlo* v. *Faden.* vol. 27, p. 255

19. Upon the marriage, in Ireland, of a domiciled Englishman with the daughter of a domiciled Irishman, funds provided by the husband and by the father of the lady were settled on trusts for accumulation during the lives of the husband and wife. Held, that the trust was valid, during the life of the husband, as to the whole fund; for, so far as it was a settlement by the lady's father, it was an Irish settlement, and not affected by the Thellusson Act; and, so far as it was a settlement by the husband, the accumulation might, under the act, lawfully continue at least during the life of the settlor. *Heywood* v. *Heywood.* vol. 29, p. 9

20. Where, after an absolute gift to *A. B.*, there is superadded a direction to accumulate, which is partially void under the Thellusson Act (39 & 40 *Geo.* 3, c. 98), *A. B.* is entitled to the void accumulations. *Combes* v. *Hughes.* vol. 34, p. 127

ACKNOWLEDGMENT OF DEED.

1. The acknowledgment of a deed by a married woman under the "Act for the Abolition of Fines and Recoveries" (3 & 4 *Will.* 4, c. 74) may be made after the deed is enrolled, and, if so made, will be valid. *In re the London Dock Act, Ex parte Taverner.* vol. 20, p. 490

2. A feme covert, tenant in tail, executed a disentailing deed on the 12th of December, 1842, which was enrolled on the 10th of June, 1843, but was not acknowledged by her until the 17th of September, 1845. Held, that it was effectual to bar the entail. *Ibid.*

ACKNOWLEDGMENT OF DEBT.

1. In answer to an application for payment of a debt, the debtor wrote: "I hope to be at *H.* soon, when I trust everything will be arranged with *W.* (the creditor) agreeable to her wishes." Held, a sufficient promise to take it out of the statute of limitations. *Edmonds* v. *Goater.* vol. 15, p. 415

2. A mortgagee, after being in possession more than twenty years without account or acknowledgment, wrote to the plaintiff's solicitor,—"I have received yours of the 2nd instant; I do not see the use of meeting either here or at *M.*, unless some one is ready with the money to pay me off." Held, that this was a sufficient acknowledgment to take the case out of the statute 3 & 4 *Will.* 4, c. 27, s. 28. *Stansfield* v. *Hobson.* vol. 16, p. 236

3. In a case unaffected by Lord Tenterden's Act, the words "interest on this note paid up to the 13th day of May, 1825," indorsed upon a promissory note in the handwriting of a person who was in the habit of transacting business for both the maker and payee of the note, was held sufficient to take the note out of the operation of the statute. *Briggs* v. *Wilson.* vol. 17, p. 330

4. When the owner of an estate contracts for valuable consideration with his mortgagees to put a man in possession, and directs him to apply the rents in payment of the interest on the first mortgage, and then the interest on the second, the mortgagor cannot afterwards urge, that the statute of limitations excludes the second mortgagee because the rents were no more than sufficient to pay the first, and the second mortgagee had for more than twenty years received nothing. *Knight* v. *Bowyer.* vol. 23, p. 609

5. Payments made by a receiver in a suit, but which were not authorized by the order appointing him, held not to take the case out of the statute of limitations. *Whitley* v. *Lowe.* vol. 25, p. 421

6. On the death of a mortgagor in 1833, his widow (who was entitled to dower) took possession of the mortgaged estate, with the consent of the co-heirs, and she paid interest on the mortgage. In 1858, the mortgagee instituted a suit to realize his mortgage, in which it did not appear that any interest had been paid by one of the co-heirs during the interval. Held, that the payment of the interest by the widow prevented the statute running, for either such co-heir was himself barred, or the payment of interest had been made on his behalf. *Ames* v. *Mannering.* vol. 26, p. 585

7. A mere letter of licence by a creditor to his debtor does not suspend the operation of the Statute of Limitations. *Fuller* v. *Redman.* vol. 26, p. 614

8. An acknowledgment to take a case out of the Statute of Limitations must be made to the creditor; and, *semble*, that one to his agent is sufficient. *Ibid.*

9. In a letter from the drawer to the holder of a bill of exchange, he said, "If in funds, I would immediately pay the money and take the bill out of your

hands." Held, that this was insufficient to take the case out of the Statute of Limitations. *Richardson* v. *Barry.* vol. 29, p. 22

10. Where a testator charges his real estate with the payment of his debts, a payment by the devisee of one estate, which prevents the operation of the statute of limitations, does not affect the devisee of another estate. *Dickinson* v. *Teasdale.* vol. 31, p. 511

11. After an administration decree, an executor has no right, as against the parties interested in the estate, to give an acknowledgment to take a debt barred by the statute of limitation out of its operation. *Phillips* v. *Beal.* (No. 2.) vol. 32, p. 26

12. A devise of real estate subject and charged with legacies does not create an express trust in favour of the legatees, and therefore such legacies are barred by the 3 & 4 *Will.* 4, c. 27, after twenty years, unless there has been some payment or signed acknowledgment. *Proud* v. *Proud.* vol. 32, p. 234

13. A debtor wrote to his creditor, "I will pay you as soon as I get it in my power." Held, that the statute of limitations did not commence running until the debtor became of ability to pay. *Hammond* v. *Smith.* vol. 32, p. 452.

ACQUIESCENCE.

[*See* DELAY, WAIVER.]

ACT OF BANKRUPTCY.

In *March*, a trader assigned all his goods, &c. to *A. B.*, to secure a composition to his creditors, and *A. B.* became liable for the payment. The wife of the trader became surety to *A. B.* in respect to her separate estate. In *November*, the trader was made bankrupt, and *A. B.* entered into an arrangement by which he gave up the goods to the assignee. Held, that *A. B.*'s assignment was an act of bankruptcy, and that the wife's separate estate as surety was not released. *Hardwick* v. *Wright.* vol. 35, p. 133

ACT OF PARLIAMENT.

1. In a railway company there were two classes of shareholders. A general meeting authorized the directors to apply to parliament for an act which would very materially alter the existing rights and interest of the two classes *inter se*. Held, that such an application was not a breach of trust or duty, and that to hold otherwise would be applying too strictly to a Railway Company the principles admitted to be applicable to private partnerships resting on private contracts unconnected with public duties and interests, and capable of dissolution. *Stevens* v. *The South Devon Railway Company.* vol. 13, p. 48

2. Upon the application of a shareholder for an injunction to restrain the company from applying to parliament for an act altering the constitution of the company, the court refused to restrain the application to parliament or the use of the corporate seal for that purpose, but restrained the application of the funds and moneys of the company towards the payment of the costs. *Ibid.*

ACTION AT LAW.

[*See* ISSUE AT LAW.]

1. A motion being made for an injunction, it stood over with liberty to the Plaintiff to bring an action to establish his right. The Plaintiff neglecting to proceed therein, the motion was refused with costs. *Perry* v. *Truefitt.* vol. 6, p. 418

2. Distinction between directing an issue and giving liberty to bring an action at law to try a legal right. In the former case, application for a new trial must be made in this Court, when all the proceedings at law will be examined; but in the latter, application for a new trial must be made to the Court of law, and this Court will look merely to the result of the action. *Hope* v. *Hope.* *Smith* v. *The Earl of Effingham.* vol. 10, pp. 581, 589

ADDITIONAL LEGACIES.

[*See* REFERENCE (GIFT BY).]

ADEMPTION.

[*See* LEGACIES (ADEMPTION), SATISFACTION.]

1. A testator bequeathed "the principal sum" secured to him by a mortgage in fee. It was afterwards voluntarily paid off in the testator's lifetime. Held, that the legacy was adeemed. *Phillips* v. *Turner.* vol. 17, p. 194

2. A testator bequeathed leaseholds, subject to the payment thereout of an annuity to *A. B.* He afterwards assigned the leaseholds on other trusts, and reserved a power to appoint a like annuity to *A. B.* Subsequently, he confirmed his will, but he did not, in terms, execute his power. Held, that the annuity failed. *Cooper* v. *Mantell.* (No. 1.) vol. 22, p. 223

3. An adeemed bequest is not set up again by a subsequent confirmation of the will. *Cooper* v. *Mantell.* (No. 1.) vol. 22, p. 223

Montague v. *Montague.* vol. 15, p. 565

4. In 1829, a testator directed his trustees to raise 5,000*l.*, out of his real estate, for his son. In 1835, on his son's marriage, he covenanted to pay, at his death, 5,000*l.* to the trustees of his son's settlement. In 1850, after referring to the legacy of 5,000*l.* to his son, he directed his trustees to raise a further sum of 7,000*l.* for his son. Held, by the Master of the Rolls and the Lords Justices, that the first bequest had not been adeemed, and that the three sums of 5,000*l.*, 5,000*l.* and 7,000*l.* were payable. *Hopwood* v. *Hopwood.* vol. 22, p. 488

5. By her will, the testatrix directed the trustees of a settlement executed by her to hold "all and singular the trust moneys comprised therein, and the securities on which the same should be invested" on trust to pay legacies, &c. Held, that the bequest of such of the trust moneys as had been called in, received and re-invested by the testatrix in her life was adeemed. *Jones* v. *Southall.* (No. 2.) vol. 32, p. 31

6. A bequest of 700*l.* to a daughter before her marriage,—Held, not adeemed by a simple gift of 400*l.* by the latter to the husband after the marriage, nor by an advance of 100*l.* to the daughter on her marriage for her outfit. *Ravenscroft* v. *Jones.* vol. 32, p. 669

7. Bequest by a father of 7,000*l.* in remainder after the death of his widow, in trust for his daughter for life, with remainder to her children of any marriage. Held, adeemed by a subsequent gift in possession of 19,000 rupees Indian Stock, made by the father on the marriage of his daughter, and settled on her husband for life, with remainder to herself for life, with remainder to the children of that marriage. *Phillips* v. *Phillips.* vol. 34, p. 19

ADMINISTRATION.

[*See* ADMINISTRATION BOND, ADMINISTRATION SUMMONS, ASSETS, CHARGE OF DEBTS, COSTS OF ADMINISTRATION, EXONERATION, INJUNCTION (FOREIGN COURT), ORDER OF ASSETS, PAYMENT (DEBTS AND LEGACIES).]

1. In an administration suit, the Court authorized the legal personal representative to carry on newspapers which formed part of the assets, and a stationer for that purpose furnished paper on credit. Held, that he was entitled to be paid out of the fund in court forming part of the testator's estate, though such estate was insufficient to pay the testator's debts. *Tinkler* v. *Hindmarsh.* vol. 2, 348

2. The testator, while on a visit, died of a malignant fever. The furniture was, by the advice of the medical advisers, destroyed, and the friend was obliged to remove from his house. Held, that the testator's estate was liable for the damage. *Shallcross* v. *Wright.* vol. 12, p. 558

3. Part of the testator's property being, at his death, invested on insufficient securities, an inquiry was directed (though the tenant for life was entitled to enjoy it *in specie*), whether any and which of the outstanding debts due to the testator should be got in. *Crowe* v. *Crisford.* vol. 17, p. 507

4. After a decree in an administration suit for payment of the debts and of the remaining assets to the parties entitled, persons in *France*, claiming as creditors, and who had not come in under the decree, took proceedings there against the executors: on the petition of the executors the order for payment to the beneficiaries was stayed. *Brett* v. *Carmichael.* vol. 35, p. 340

5. A simple contract creditor who had instituted and prosecuted a suit for administration in the face of information furnished by the legal personal representative (which turned out to be correct), that there were no assets for the payment of simple contract debts, was ordered to pay the costs of the suit. *King* v. *Bryant.* vol. 4, p. 460

6. A mortgagee filing a bill for the benefit of himself and the other creditors of the deceased, is entitled to payment of his mortgage money out of the mortgaged estate, before payment of the costs of suit. *Aldridge* v. *Westbrook.* vol. 5, p. 188

7. In a creditors' suit, since the 3 & 4 *Will.* 4, c. 104, making the real estate subject to the debts, it is not necessary to establish the will against the heir. *Goodchild* v. *Terrett.* vol. 5, p. 398

8. A creditors' bill was filed, which also prayed other relief. Soon after a purely creditors' suit was instituted by another party, and a decree obtained therein within seven days. The Court stayed the first suit so far only as it prayed an administration of the assets. *Dryden* v. *Foster.* vol. 6, p. 146

9. Real estate was directed to be sold and remitted to *England*, which was done: and under decree for an account of the personal estate: Held, that the produce of the real estate remitted had been properly included. *Pringle* v. *Crookes.* vol. 7, p. 257

10. In a creditors' suit an account of the rents and profits received since the death is never directed, until the produce of

the sale of the real estate proves insufficient for payment of the debts. *Stratford* v. *Ritson.* vol. 10, p. 25

11. *A.*, as surety to a firm, signed a joint and several bill of exchange, on the faith that *B.* would join as co-surety. *B.* never signed it, but *A.* was afterwards compelled to pay it, by proceedings at law, at the suit of an indorsee. One of the firm died. Held, that the firm were not entitled to avail themselves of the bill, and were liable to repay the amount of the costs of the proceedings both at law and equity; and that the claim of *A.* was sufficient to support a creditors' suit for the administration of the estate of the deceased partner. *Rice* v. *Gordon.* vol. 11, p. 265

12. A creditors' suit was instituted in 1803, and in 1806, the usual decree was made, and a sum was paid into Court. The suit became defective in 1807, by the death of the personal representatives of the debtor, and the decree was not prosecuted. In 1853, the representatives of the Plaintiff, having revived the suit against the administrator *de bonis non* of the debtor, petitioned for payment of his debt out of the money in Court. The Court gave leave to prosecute the decree as to the debts. *Forster* v. *M'Kenzie*, *Forster* v. *Menzies.* vol. 17, p. 414

13. After decree in a creditors' suit the Plaintiff died, leaving no personal representative. The Court refused to allow the suit to proceed upon the motion of the accounting parties, but offered to do so if a creditor applied. *Johnson* v. *Hammersley.* vol. 24, p. 498

14. The only remaining assets of a testator consisted of a devised real estate, which was liable to his bond for securing an annuity. Before the annuity had fallen into arrear, the annuitant instituted a suit for administration, and for an injunction and receiver. The Court merely declared the Plaintiff's annuity a charge on the real estate, but ordered the Plaintiff to pay the Defendant's costs of suit. *Norman* v. *Johnson.* vol. 29, p. 77

15. A testator gave his real and personal estate to trustees, in trust to convert his personal estate (except his leaseholds), and out of the produce "to appropriate a sufficient portion" to pay an annuity which he had agreed to pay on the marriage of his daughter. He gave his trustees a discretionary power to sell his real and leasehold estates, and they were to hold the produce in the manner directed concerning the money arising from his residuary personal estate. The debts exhausted the personal estate, but the realty and leaseholds were sufficient to pay the annuity. A bill having been filed, before the annuity was in arrear, to have a fund set apart to secure it: Held, that the trustees were not bound to sell, and the Court only made a declaration that the annuity constituted a charge on the whole estate, and made the Plaintiffs pay the costs up to the hearing. *Burrell* v. *Delevante.* vol. 30, p. 550

16. A testator directed his debts to be paid out of his personal estate, and, in a subsequent clause, out of a mixed fund composed of realty and personalty. Held, on the context, that the latter direction prevailed. *Hopkinson* v. *Ellis.* vol. 10, p. 169

17. Mode of distributing a deficient estate, where there were life annuities and gross sums charged thereon. *Heath* v. *Nugent.* vol. 29, p. 226

18. A bill was filed by a creditor, claiming in respect of an admitted breach of trust, against *B.* and the representatives of *S.*, deceased; and it prayed that the accounts might be taken, and the real estate of *S.* sold and applied in paying the amount due to the Plaintiff, and the other debts. A sum of money was paid into Court in this suit, and a decree was made against the assets of *S.* only, and accounts and inquiries were directed. A creditors' suit was subsequently instituted against the representatives of *S.*, and the common decree made. The Plaintiffs in the first suit claimed the fund in Court, in priority of the creditors in the second. Held, however, that after payment of the costs of the first suit, it ought to be applied, in a due course of administration, towards payment of all the creditors of *S.* *Smith* v. *Birch.* vol. 3, p. 10

19. An estate was administered under the Court, and all claims being provided for, the devisee was let into possession. A further claim was afterwards made against the estate. Held, that the trustees of the will were not justified, of their own authority, in taking possession to provide for it. *Underwood* v. *Hatton.* vol. 5, p. 36

20. Where the Court administers the assets, the trustees are protected against all claims on the testator's estate, but legatees still remain liable in respect of their beneficial interest. *Ibid.*

21. Under a decree in an administration suit, certain parties only were allowed to attend before the master. The master approved of some suits being instituted by the receiver, who was to be indemnified out of the estate. The funds appearing by affidavit to be "abundantly ample," the Court ordered the institution of the suits, and the payment of costs out of the fund standing to the general credit of the cause, upon service on those only whom the master had authorized to attend him on the reference. *Lockhart* v. *Hardy.* vol. 6, p. 267

22. After an estate has been fully adminis-

tered in this Court, the executor will not be permitted, without the leave of the Court, to prosecute an action to recover part of the testator's property from a party to the suit. *Oldfield* v. *Cobbett.* vol. 6, p. 515

23. A person at his death was member of a banking company established under the 7 *Geo.* 4, c. 46, and subject to its liabilities. After the expiration of three years, a suit was instituted for the administration of his estate, and the common decree was made for taking an account of his debts. Persons who were creditors of the banking company at the testator's death claimed before the master. Held, that their claims did not come within the scope of the decree; secondly, that their claims were barred by the lapse of three years; and, thirdly, that the proper way of bringing their claims before the Court was by petition, and not by exception. *Barker* v. *Buttress.* vol. 7, p. 134

24. A residuary estate was divisible amongst several persons. An account was made up, and the adults received their shares. The infants filed a bill for an account against the executors and the other residuary legatees. The latter being satisfied, deprecated the proceedings. The accounts turned out to be substantially correct. Held, that the costs were payable out of the Plaintiffs' share alone. *Mackenzie* v. *Taylor.* vol. 7, p. 467

25. A legal personal representative cannot alone institute a suit for the administration of the real estate of the intestate for the payment of his debts. *Catley* v. *Sampson.* vol. 33, p. 551

ADMINISTRATION AD LITEM.

[*See* PARTIES (REPRESENTATIVE).]

Administration *ad litem* held sufficient to represent the testator's estates in a suit seeking to establish a specific lien on his shares in a company, which had been possessed by the Defendants (his Scotch executors and residuary legatees), and who had received assets more than sufficient to answer all claims on the testator's estate. *Maclean* v. *Dawson.* (No. 3.) vol. 27, p. 369

ADMINISTRATION BOND.

1. Where no proceedings have been taken to put an administration bond in suit, a sum due from the administrator at his death to the estate of the intestate, is not a specialty debt. *Parker* v. *Young.* vol. 6, p. 261

2. A suit cannot be maintained in this Court by a party interested in the intestate's estate upon an administration bond, where no special reasons are shewn why the proceeding is not taken in the name of the ordinary. *Bolton* v. *Powell.* vol. 14, p. 275

3. Held also, that an order of the Ecclesiastical Court to attend with the bond in Chancery as may be requisite and necessary for the furtherance of justice, is not a sufficient reason. *Ibid.*

ADMINISTRATION SUMMONS.

[*See* STAYING SECOND SUIT.]

1. Practice of the Court in granting or refusing the common administration decree, upon summons, in cases involving complicated questions. *Rump* v. *Greenhill.* vol. 20, p. 512

2. Order under Sir George Turner's Act. *Re Hood.* vol. 23, p. 17.

3. An order was made against an executor, in chambers, for taking the accounts, under the 15 & 16 *Vict.* c. 86, s. 45. The executor set up a release. Held, that there being no jurisdiction to set aside the release on summons, the order was irregular. *Acaster* v. *Anderson.* vol. 19, p. 161

ADMINISTRATOR.

[*See* EXECUTOR.]

ADMIRALTY COURT.

Jurisdiction of this Court to restrain proceedings in the Admiralty Court on bottomry bonds. Injunction granted to restrain proceedings in the Admiralty Court respecting a bottomry bond and freight of a ship, on the ground that the matters could be more conveniently, directly, and effectually determined in this Court. *M'Duncan* v. *Calmont.* vol. 3, p. 409

ADMISSION.

[*See* ADMISSION OF ASSETS, EVIDENCE.]

1. The Plaintiff was the commercial agent of the *East India* Company at *Amboyna.* It was his duty to send his account to *Jones*, the Company's agent at *Banda*, to examine and transmit to the Governor of *Madras.* On the Plaintiff's accounts, there appeared a balance of 1,325 dollars against him, but, on reference to the accounts kept by *Jones* of the same transactions, instead of a deficiency, 4,771 dollars appeared due to the Plaintiff. The company then allowed the 1,325 only. Held, that this was not a sufficient admission and recognition of the correctness of *Jones's* accounts, as to entitle the Plaintiff without further evidence to the

4,771 dollars. *Farquhar* v. *The East India Company.* vol. 8, p. 260

2. The Court will not determine a question between two parties, on admission of facts on which they reserve to themselves the right of afterwards adducing evidence. *Sidebotham* v. *Barrington.* vol. 3, p. 524
3. Little reliance is to be placed on one unsupported witness testifying to an oral admission by the Defendant of the Plaintiff's case. *Greenslade* v. *Dare.* vol. 20, p. 284
4. A trustee, having power to vary trust funds, admitted he had sold out trust funds, but did not shew how the produce had been invested. Held, on such an admission, that he was liable to make good the fund. *Meyer* v. *Montriou.* vol. 5, p. 146
5. Assignment of all and every the household goods, &c., the particulars whereof were stated to be more fully set forth in an inventory signed by the grantor, and annexed thereto. There was no such inventory. Held, nevertheless, that the assignment was effectual; it appearing from the answer of the party resisting its validity, that the particulars could be ascertained. *England* v. *Downs.* vol. 2, p. 522

ADMISSION OF ASSETS.

1. Executors paid some interest on a legacy, and about nine years after the testator's death, passed their accounts at the legacy duty office, shewing a considerable residue. Held, that the legatee was entitled to an immediate decree for payment of the legacy, without first taking the accounts of the testator's estate. *Whittle* v. *Henning.* vol. 2, p. 396
2. Payment of interest by an executor, commencing six years after the testator's death, and continuing seven years. Held to be such an admission of assets as to make the executor personally liable. *Attorney-General* v. *Chapman.* vol. 3, p. 255
3. The Court, on further directions, refused to hold, that by payment of interest the executors had admitted assets, such a conclusion being wholly at variance with all that had been previously done in the suit. *Rowley* v. *Adams.* vol. 7, p. 395
4. Upon an application to be relieved from a decree containing an admission of assets. Held, that whether fraud or mistake had been committed, yet that under the circumstances of the case, justice could not be done upon a mere rehearing of the cause. *Davenport* v. *Stafford.* vol. 8, p. 503
5. Annuities given by a will were regularly paid by the executors for six years, and irregular payments on account, were made by them for the next four years. Semble, that this of itself would be an admission of assets. *Payne* v. *Little.* vol. 22, p. 69
6. This Court does not bind executors by an admission of assets, if new claims on the estate afterwards arise. *Ibid.*
7. Payments to legatees, made under a decree in a legatees' suit, cannot be allowed, as against creditors, if made without having the accounts taken, and therefore as upon an admission of assets. *The Official Managers of the Newcastle, &c. Banking Company* v. *Hymers.* vol. 22, p. 367
8. Distinction between a decree to administer the estate of *A. B.* and a decree directing his legal personal representative either to admit assets or to account. *George* v. *George.* (No. 1.) vol. 38, p. 350

ADULTERINE BASTARDY.

1. Observations as to the nature and extent of proof necessary to establish a case of adulterine bastardy, and as to what kind of evidence is admissible in such cases. *Hargrave* v. *Hargrave.* vol. 9, p. 552
2. A child born of a married woman is, in the first instance, presumed to be legitimate. The presumption thus established by law, is not to rebutted by circumstances which only create doubt and suspicion, but it may be wholly removed by shewing that the husband was, 1. Incompetent. 2. Entirely absent, so as to have no intercourse or communication of any kind with the mother. 3. Entirely absent at the period during which the child must, in the course of nature, have been begotten. 4. Only present under circumstances as afford clear and satisfactory proof that there was no sexual intercourse. Such evidence as this puts an end to the question and establishes the illegitimacy of the child of a married woman. *Ibid.*
3. It is, however, very difficult to conclude against the legitimacy, in cases where there is no disability and where some society or communication is continued between husband and wife during the time in question, so as to have afforded opportunities of sexual intercourse; and in cases where such opportunities have occurred, and in which any one of two or more men may have been the father, whatever probabilities may exist, no evidence can be admitted to shew that any man, other than the husband, may have been, or probably was, the father of the wife's child. Throughout the investigation the presumption in favour of the legitimacy is to have its weight and in-

fluence, and the evidence against it ought to be strong, distinct, satisfactory, and conclusive. *Hargrave* v. *Hargrave*.
vol. 9, p. 552

4. The child of a married woman held to be illegitimate, on proof of non-access of the husband, and of conduct and admissions of the wife and her paramour. *Re Sinclay*. vol. 17, p. 523

ADVANCEMENT.

[*See* ADEMPTION, ADVANCEMENT IN LIFE, HOTCHPOT, MAINTENANCE, PURCHASE BY FATHER IN NAME OF SON.]

ADVANCEMENT IN LIFE.

[*See* MAINTENANCE.]

A power of advancement for putting or placing the issue of the marriage "to any profession, trade, or business, or for their advancement in life." Held, to authorize the payment of part of the trust funds to a daughter on her marriage. *Lloyd* v. *Cocker*. vol. 27, 645

ADVERSE POSSESSION.

1. Trustees, with the consent of *A. B.*, the tenant for life, had a power to sell the trust estate, and invest the produce in other real estate. In 1810, *A. B.*, with the concurrence of the trustees, sold the estate for 8,440*l.*, and received the purchase money. About the same time (but whether with the concurrence of the trustees was not proved), *A. B.* purchased another estate for 17,400*l.* Of the 8,440*l.*, 8,124*l.* was paid by *A. B.* in part payment for the second estate; the remainder was paid partly out of *A. B.*'s monies, and partly by money raised by a mortgage of the estate. The estate was conveyed by *A. B.* in fee. No acknowledgment or declaration of trust was ever made by *A. B.*, and he retained possession of the estate till thirty years after, when he became bankrupt. The Court, against *A. B.*'s assignees, presumed, under these circumstances, that the purchase had been made under the power for the benefit of the trust, and held that there had been no such adverse possession, and no such acquiescence on the part of the trustees, as to preclude the Court making a declaration that they had a lien on the estate to the extent of the trust monies invested in its purchase. *Price* v. *Blakemore*.
vol. 6, p. 507

2. Where property is under lease, adverse possession runs against the reversioner from the expiration of the lease, or from the time when the tenant pays rent to one claiming wrongfully to be entitled in immediate reversion. *Chadwick* v. *Broadwood*. vol. 3, p. 308

3. Tenant for life paying off charge on settled estate, he taking no steps for more than twenty years to keep it alive, the Statute of Limitations held not to apply. *Burrell* v. *The Earl of Egremont*.
vol. 7, p. 205

4. Though under the 3 & 4 Will. 4, c. 27, s. 34, the right is extinguished at the end of twenty years, still adverse possession by a succession of independent trespassers, for a period exceeding twenty years, confers no right on any one of them who has not himself had twenty years uninterrupted possession, except as furnishing a defence to a trespasser in possession against an action by the rightful owner. *Dixon* v. *Gayfere*, *Fluker* v. *Gordon*.
vol. 17, p. 421

5. After both the trustee and *cestui que trust* had been out of possession more than twenty years an ejectment was brought by *A. B.*, the heir of the trespasser, in the name of the trustee, and he obtained judgment. The trustee, who, disclaiming all personal interest, then instituted a suit, seeking to have the rights declared as between the rightful owner and the heir of the trespasser, and the Court, by its *receiver*, took possession. *A. B.* afterwards instituted a suit against the trustee and the rightful owner to recover the property. Held, that the *Court being in possession*, the Statute of Limitations had conferred no right, and did not apply. *Ibid.*

6. *A.* wrongfully entered and died intestate: his widow entered. Held, that the possession of the widow was not a continuance of that of her husband, it not being shewn that she was entitled to dower, and such a right not entitling her to enter into the whole estate. *Ibid.*

7. *A.*'s furniture was seized under an execution by the sheriff, who assigned it to the judgment creditor. *A.*'s friends afterwards purchased it from the judgment creditor, and the sheriff's officer then retired and left the goods in *A.*'s possession, who remained in undisturbed enjoyment for more than six years. After his death, the furniture was claimed by his friends who had purchased it, and adversely by his administratrix. Held, that the rights of the former were not barred by the Statute of Limitations, and that as *A.*'s possession was rightful, the statute could only apply from six years from a conversion. *Edwards* v. *Clay*.
vol. 28, p. 145

8. The testator held 2,000*l.* belonging to his nephew, on which for eight years he paid interest, notwithstanding the nephew owed him 1,000*l.* on his promissory note.

Though the nephew had paid no interest on the note, and had given no acknowledgment of the debt. Held, that although the remedy for recovering the 1,000*l.* was barred by the Statute of Limitations, still the right of the executors to set it off against the 2,000*l.* remained. *Gee* v. *Liddell.* (No. 2.) vol. 35, p. 629

ADVOWSON.

[*See* PATRONAGE.]

1. *A.*, seised of an advowson, of which his son *W. J.* was incumbent, devised it to trustees to sell on his son's death and divide the produce between his own nine children. Held by the Master of the Rolls, and afterwards by the Lord Chancellor and Lords Justices, that, on the death of *W. J.*, the right of presentation which then accrued and could not be legally sold, passed by the will, and did not descend to the heir. Held also, by the Master of the Rolls, that the Court had authority to make a partition of an advowson, and would follow by analogy the rule as to co-parceners, and give the right of presentation to the members by seniority; but the Lord Chancellor and Lord Justice Knight Bruce held, that the right to present was to be determined between the children by lot. *Johnstone* v. *Baber.* vol. 22, p. 562
2. A testator devised his advowson to trustees, to sell on the death of *A.* and divide the produce amongst certain persons. *A.* was the incumbent, so that on his death no sale could be made until the vacancy was filled up. Held, that the Court had no jurisdiction to authorize a sale in the lifetime of *A.* on the ground that it would be beneficial to the parties. *Johnstone* v. *Baber.* vol. 8, p. 233
3. *A.*, by will, directed trustees, upon the death of the present incumbent, to present *A.* to the living of *S.*, in case he should take orders; and if he should not, or taking orders should die in the lifetime of *B.*, then to present *B.*, in case he should take orders; and after their several deceases, or of such of them as should take orders and be presented, or in the event of neither taking orders, she devised the advowson to *C.* in fee. Held, that the gifts in favour of *A.* and *B.* were in succession and not alternative, and that on the death of *A.*, *B.* was entitled to be presented. *Hatch* v. *Hatch.* vol. 20, p. 105
4. A testator having the power of disposing of an advowson (subject to the existing incumbency of *A.*, and a contingent right of *B.* to be afterwards presented) devised "the next avoidance thereof" in favour of *C.* Held, that "the next" meant, the next the testator had power to dispose of, viz., that following the incumbency of *A.* and of *B.* *Hatch* v. *Hatch.* vol. 20, p. 105

AFFIDAVIT.

[*See* AFFIDAVIT AS TO DOCUMENTS, AFFIDAVIT OF SERVICE, EVIDENCE, EXHIBIT, OFFICE COPIES, SWEARING AFFIDAVITS, WITNESS.]

1. Effect of affidavits as to facts on *belief* only is to put the opposite party to answer them. *Busk* v. *Beetham.* vol. 2, p. 537
2. Affidavits in the Master's office ought to be regularly filed, like other affidavits. *Stubbs* v. *Sargon.* vol. 2, p. 496
3. Affidavits sworn before a master extraordinary, who was the clerk of the Plaintiff's attorney, rejected. *Wood* v. *Harper.* vol. 3, p. 290
4. Pending a reference of affidavits for impertinence, they cannot be used. The Court, however, will, in such a case, put the parties under terms, so as to meet the justice of the case. *Pearse* v. *Brook,* vol. 3, p. 337
5. In a pressing case an affidavit was allowed to be sworn in open Court. *The Mercers' Company* v. *The Great Northern Railway Company.* vol. 14, p. 20
6. After answer, the original bill was amended, and the Defendant obtained time to answer it; the Plaintiff then gave notice of motion for a special injunction, and filed affidavits in support of it. The motion coming on, the Defendant obtained time to answer the affidavits, and then filed both her answer and affidavits in opposition. Held, that the second answer must be treated as an affidavit, and that the affidavits in support of the motion might be used to qualify the second, but not the first answer. *Maden* v. *Veevers.* vol. 5, p. 503
7. A motion for an injunction and receiver being brought on, stood over at the request of the Defendant, who filed his answer the next day. Held, that the Plaintiff might use affidavits subsequently filed, in contradiction to the answer, which, under these circumstances, must be treated as an affidavit. *Gibson* v. *Nicol.* vol. 6, p. 422
8. Remarks on the impropriety of making the statutory affidavit as to belief, in the statements of a petition to wind up, without inquiry as to the truth of such statement. *In re The Anglo-Greek Steam Navigation and Trading Company (Limited).* vol. 35, p. 399
9. An affidavit not received in evidence on further directions. *Attorney-General* v. *Gell.* vol. 8, p. 362
10. On a motion for an issue to try the Plaintiff's heirship, affidavits of facts

of which the Defendant by his answer professes to be ignorant are inadmissible. *Lancashire* v. *Lancashire*. vol. 9, p. 259

11. Affidavits not admitted at the hearing under 13 & 14 *Vict.* c. 35, s. 28, if they raise a new issue. *Hoghton* v. *Hoghton*. vol. 15, p. 278

12. In 1843, a tenant in tail joined in resettling one of two family estates. He disputed the validity of the transaction, and subsequently, in 1845, married. On that occasion a settlement was executed, making provision for the younger children only of the marriage. The instruction stated, that it was desired to keep his landed estates free from any settlement, and contained this note: "N.B.—The eldest son will take the family estate." In a suit to set aside the resettlement of 1843, affidavits were produced, on behalf of the infant eldest son of the marriage, to shew that, on the negotiation for the marriage, it was understood that, under existing settlements, the eldest son would become entitled to considerable landed estates, and therefore, that it was only necessary to provide for the younger children. Held, first, that these affidavits were inadmissible under Sir *George Turner's* Act (13 & 14 *Vict.* c. 35, s. 28); and secondly, that if admitted, they did not shew that the marriage proceeded on the faith of the re-settlement of 1843, and that in this suit no decree or inquiry could be made in favour of the infant. *Ibid.*

AFFIDAVIT AS TO DOCUMENTS.

[*See* PRODUCTION OF DOCUMENTS.]

1. Practice as to requiring a Defendant to make a further affidavit as to documents. *Warden* v. *Peddington*. vol. 32, p. 639

2. Where, after a Defendant has made a sufficient affidavit as to documents, the Plaintiff amends his bill, introducing new matters, he is entitled to have from the Defendant a further affidavit of documents as to the amendments. *Warden* v. *Peddington*. vol. 32, p. 639

3. By a consent order made in an administration suit, a purchaser was to be bound by any order, as if he were a party to the suit and his contract had been the subject of it. Upon a dispute arising between the purchaser and vendors:—Held, that the purchaser was entitled to call on the vendors to make an affidavit of documents and to produce them. *Dent* v. *Dent*. vol. 35, p. 126

AFFIDAVIT OF SERVICE.

An affidavit of personal service of an order for payment, under the Winding-up Acts, need not state where the service was effected. *Re Job. Re The Nantle Vale Slate Company*. vol. 27, p. 32

AFTER ACQUIRED PROPERTY.

[*See* COVENANTS TO SETTLE.]

AGENT.

[*See* PRINCIPAL AND AGENT.]

An agent assisting in a breach of trust is personally responsible. *The Attorney-General* v. *The Corporation of Leicester*. vol. 7, p. 176

AGREEMENT.

[*See* COMPROMISE, CONTRACT, COVENANT, SPECIFIC PERFORMANCE, STATUTE OF FRAUDS, UNCERTAINTY.]

1. One partner by letter proposed to the other either to retire or to refer to arbitration. The other partner, in answer, said he concurred in the retirement, but subject to a condition as to the taking the accounts. Held, that the partnership was not dissolved. *Hall* v. *Hall*. vol. 12, p. 414

2. A client, by letter, undertook to pay his solicitor interest on balance appearing against him from time to time, upon the principle of annual rests. Held, that the agreement was unilateral and not binding, and that even if it had been duly signed by both parties, it was not such an agreement as could be enforced between solicitor and client, being entered into while that relation was subsisting between them. *Moss* v. *Bainbrigge*, *Bainbrigge* v. *Moss*. vol. 18, p. 478

ALIEN.

1. A devise of lands was made to *English* subjects, in trust to sell, and, after payment of mortgages, to invest the surplus monies in the funds, in trust for persons, some of whom were aliens. Held, that the Crown was not entitled to the share of the aliens either in the land or the produce. *Du Hourmelin* v. *Sheldon*. vol. 1, p. 79

2. By the settlement made on the marriage of an *English* lady with a foreigner, her Bank annuities were settled in trust for her, her husband, and their children; and her real estates were directed to be sold and the produce held on similar trusts. And it was agreed between all the parties, and the husband covenanted, that in case any real or personal estate should vest in the wife, or in him in her right, he, as far as he lawfully could, would, either alone or in concurrence

with his wife, settle the same upon the trusts, and subject to the powers, &c. therein expressed concerning the Bank annuities. Real estates descended on the wife. The husband and some of the children were aliens. Held, that the lands descended were bound by the covenant, and that they ought to be sold and the produce invested on the same trusts as the Bank annuities. *Maiter* v. *De Croismar*. vol. 11, p. 184

3. A patentee applied to the Court of Chancery to stay all proceedings on a *scire facias* to repeal the patent, or that a *nolle prosequi* might be entered, on the ground, that the prosecutor was an alien. Held, that the Court had no authority to interfere in the matter. *The Queen* v. *Prosser*. vol. 11, p. 306
4. An illegal monopoly is a public grievance, and the Crown having been informed of such a grievance, and having the power and duty to remove it, if it be such, ought not to be disabled from directing the necessary proceedings to ascertain the truth, because the information was given by an alien. *Ibid.*
5. The Court will enforce, for the benefit of the Crown, a trust of real estate created in favour of an alien. The devise being valid, and there being a *cestui que trust*, who can take but not hold, the Crown becomes entitled beneficially, and not the trustee or heir at law. *Rittson* v. *Stordy* (3 *Smale & Giffard*, 230) dissented from. *Barrow* v. *Wadkin*. vol. 24, p. 1
6. The words in the 13 *Geo.* 3, c. 21, s. 3, are to be read "aliens' duties, customs, and impositions," and not "aliens, duties, customs, and impositions," and therefore the *grandchild of a natural-born subject*, born out of the Queen's allegiance, is entitled to the benefit of that statute, in regard to holding lands as a natural-born subject, although he has not complied with the formalities specified in the third section. *Barrow* v. *Wadkin*. (No. 2.) vol. 24, p. 327
7. An alien who had served on board a British man-of-war for four years in time of war,—Held to be a natural-born subject, under the 13 *Geo.* 2, c. 3. *Re Giraud*. vol. 32, p. 385

ALLOWANCE.

[*See* PAYMENT OUT OF COURT.]

ALTERATION OF DEED.

[*See* DEED.]

A mortgagor executed a mortgage deed to *A. B.*, the solicitor who prepared it. On the following morning, *A. B.* filled in the date, the names of the tenants and the date of the proviso for redemption:—Held, that this alteration did not render the deed void. *Adsetts* v. *Hives*. vol. 33, p. 52

ALTERNATIVE GIFT.

Effect may be given to a gift over in one of two alternatives which happens though the other is too remote. Thus upon a bequest to trustees for *A.* for life, and after her decease to divide between her children when they should attain twenty-seven, and in the event of *A.* not leaving any child at her death, then over. *A.* had no issue, it was held, that the gift over took effect. *Cambridge* v. *Rous*. vol. 25, p. 409

ALTERNATIVE RELIEF.

1. A bill may insist on a repudiation of a transaction, and, in the alternative, asking to have the accounts taken, and the rights, &c. of the parties determined. *Cruikshank* v. *M'Vicar*. vol. 8, p. 106
2. On a bill seeking to set aside deeds *in toto*, and praying no alternative relief, the Court will not, adversely, grant an account on the footing of their validity. *Selby* v. *Jackson*. vol. 6, p. 192

AMENDMENT.

[*See* TIME FOR AMENDMENT.]

1. Upon the allowance of a demurrer the question of costs and liberty to amend are in the discretion of the Court, and for the purpose of determining them, the Court to some extent has regard to the statements in the bill, though admitted only for the purposes of the demurrer. *Schneider* v. *Lizardi*. vol. 9, p. 461
2. A bill sought to charge two trustees severally, with trust moneys retained with their several privity by third parties. After the evidence had closed, the Plaintiffs sought to withdraw the replication and to amend the bill, so as to charge the Defendants for moneys which they had jointly allowed the third parties to retain. The application was refused with costs. *Horton* v. *Brocklehurst*. (No. 1.) vol. 29, p. 503
3. A second order to amend, obtained as of course after an answer has been put in, is irregular, though the first has not been acted on. *Brooks* v. *Purton*. vol. 4, p. 494
4. Liberty being given to amend, the bill was amended by striking out the names of several co-Plaintiffs, and suing by one on behalf, &c. of the others. Held irregular: but the Court allowed the amendment to stand, security being given for costs. *Fellowes* v. *Deere*. vol. 3, p. 353
5. After one of several Defendants has answered, the Plaintiff can only obtain

one order of course to amend. Any further leave must be obtained on special application. *Davis* v. *Prout.* vol. 5, p. 375

See *Haddelola* v. *Neville.* vol. 4, p. 28

6. Amendment is a waiver of notice of motion. *Southwait* v. *Rippon.* vol. 1, p. 54

7. A Plaintiff does not, by obtaining an order to amend, between the time of giving a notice of a motion for the production of documents and its being heard, waive his right to their production. *Chidwick* v. *Prebble.* vol. 6, p. 264

8. Where the bill is amended before answer, it is not necessary to serve a *subpœna* to answer the amendments. *Stanley* v. *Bond.* vol. 6, p. 420

9. A special order to amend, without prejudice to an injunction, had to be made to the Court and not to the Master. *Wright* v. *King.* vol. 9, p. 161

10. Practice as to permitting a bill to be amended after replication. *Price* v. *Salusbury.* vol. 32, p. 446

See *Hitchcock* v. *Jaques.* vol. 9, p. 192

11. A Plaintiff, having one of the Defendants under his control, kept back his answer. Another Defendant put in his answer, and after great delay, on the part of the Plaintiff, moved to dismiss for want of prosecution. The Plaintiff to defeat the motion, obtained an order of course to amend. Held that, as there was an answer outstanding, the order to amend could not be considered "irregular." But it was afterwards discharged on other grounds. *Forman* v. *Gray.* vol. 9, p. 196

12. An order of course, though obtained within the time limited by the General Orders, discharged, on the ground of the inexcusable delay of the Plaintiff, in proceeding and getting in the answer of a Defendant under her control, and because it had been obtained for the purpose of defeating a motion to dismiss for want of prosecution. *Forman* v. *Gray.* vol. 9, p. 200

13. The expressions "last answer" and "the last of several answers" in the General Orders regulating the period within which a Plaintiff may obtain an order of course to amend, mean the last answer required in the then state of the record. *Ibid.*

See *Guardians of Wimborne Union* v. *Masson.* vol. 7, p. 309

14. The Orders of 1845 did not limit the time within which an application for an order to amend is to be made. See now Ord. ix. 15. *Potts* v. *Whitmore.* vol. 10, p. 177

15. After the expiration of the time for obtaining an order of course to amend, the Plaintiff, being unable to make the affidavit required by the 68th Order (Ord. ix. 15), applied to the Court, in the first instance, simply for leave to amend, and obtained the order on affidavit of service. Held, that the order was irregular, and it was discharged. *Semble*, that the application ought to have been made to the Court, under the 21st Order (Ord. xxxvii. 18), to enlarge the time for obtaining the order to amend without the special affidavit. *Potts* v. *Whitmore.* vol. 10, p. 177

16. After answer, a Plaintiff obtained an order of course to amend. He then made *A.* a party; but finding that *A.* was dead, he before answer to the amendment, obtained a second order of course to amend, and substituted *A.*'s representatives with apt words to charge them. The second order was discharged for irregularity, with costs. *Horsley* v. *Fawcett.* vol. 10, p. 191

See *Edge* v. *Duke.* vol. 10, p. 184

17. After one of several Defendants has put in a sufficient answer, the Plaintiff cannot obtain more than one order of course to amend, although the other Defendants may not have answered. *Duncombe* v. *Lewis.* vol. 10, p. 273

Bainbrigge v. *Baddeley.* vol. 12, p. 152

18. A Defendant put in an insufficient answer, and the Plaintiff obtained an order of course to amend within fourteen days, and that the Defendant might answer the amendments and exceptions together. No amendment was made within fourteen days. Held, that a second order to amend could not be obtained, *ex parte*. *Dolly* v. *Challin.* vol. 11, p. 61.

19. Under all orders to amend a Plaintiff must amend within fourteen days, as where he obtains leave to amend on the allowance of a demurrer., and no time is then limited. *Bainbrigge* v. *Baddeley.* vol. 12, p. 152

Armitstead v. *Durham.* vol. 11, p. 428

20. The 66th Order of May, 1845 (Ord. ix. 13), is applicable to bills of discovery. *Peile* v. *Stoddart.* vol. 11, p. 591

21. A Plaintiff took exceptions, which he gave notice of abandoning:—Held, that he had thereby shortened the time allowed for amending as of course. *Ibid.*

22. A Plaintiff, after the time allowed, obtained an order of course to amend. The order was discharged with costs, and the amended bill was ordered to be taken off the file. *Ibid.*

23. Pending the usual reference to inquire which of two suits is most beneficial, it is irregular to obtain an order of course to amend. *Fletcher* v. *Moore.* vol. 11, p. 617

24. Order to amend an information obtained on the affidavit of the solicitor alone; and which, after detailing certain circumstances, stated, "that having regard to these circumstances," the amendments could not, with reasonable diligence,

have been sooner introduced. Held, regular. *The Attorney-General* v. *The Corporation of London.* vol. 13, p. 313

25. Assignees of bankrupt Defendant allowed to be made parties by amendment. *London Gaslight Company* v. *Spottiswoode.* vol. 14, p. 264

26. A party to a special case died after it had been set down; liberty was given to amend by making his representatives parties. *Ainsworth* v. *Alman.* vol. 14, p. 597

27. Under an order giving liberty to add parties by amendment or supplemental bill, a Plaintiff may do both. *Minn* v *Stant.* vol. 15, p. 129

28. The common order to amend obtained after a claim had been set down for hearing. *Gwynne* v. *The British Peat, Charcoal, and Manure Company.* vol. 17, p. 7

29. The original bill sought relief against the Defendant, as mortgagee in possession. The Defendant, by his answer, claimed under a conveyance from the Plaintiff. By amendment, the Plaintiff, abandoning the relief under the mortgage title, sought to avoid the conveyance. A motion by the Defendant, that the amended bill might be taken off the file, or that the Plaintiff might pay the costs up to the amendment, was refused. *Allen* v. *Spring.* vol. 22, p. 615

30. A bill was filed by a judgment creditor, which, as such, could not be sustained, but pending the suit he got in a mortgage and claimed the benefit of it by amendment. Held, that the Plaintiff could not support his suit by this supplemental title. *Godfrey* v. *Tucker.* vol. 33, p. 280

ANCIENT LIGHTS.

1. Where *A.*, being entitled to ancient lights overlooking *B.*'s property, alters and extends them, and afterwards *B.* builds up and obstructs the ancient lights, the Court will, at the suit of *A.*, grant an injunction against *B.*, upon the condition of *A.*'s consenting to restore the lights to their former position. *Cooper* v. *Hubbuck.* vol. 30, p. 160

2. Injunction to restrain the obstruction of ancient lights refused, on the ground of the Plaintiff's delay, the bill being retained, with liberty to proceed at law. *Ibid.*

3. Any alteration of ancient lights although not prejudicial to the owner of the servient tenant, gives him a right to obstruct them. *Cotching* v. *Bassett.* vol. 32, p. 101

4. The owner of a dominant tenement, in the course of rebuilding, materially altered his ancient lights; this was done after communication with the owner of the servient tenement, and with the knowledge and under the inspection of his surveyor, but without any express agreement. Held, that, in equity, the lights, as altered, could not be interfered with, and a perpetual injunction was granted. *Cotching* v. *Bassett.* vol. 32, p. 101

5. If the owner of one of several houses throws out a bow in the rear, of the depth of eight feet (the whole space opposite being open), his next door neighbour cannot, on the ground of an interference with his ancient lights, prevent it. But it would be a sufficient injury, if contrary to an express covenant, to induce the Court to interfere. *Western* v. *Macdermot.* vol. 35, p. 243

6. A suit cannot be sustained for the purpose of recovering damages for an invasion of ancient lights when the injunction is refused. *Calcraft* v. *Thompson.* vol. 35, p. 559

7. An act of parliament alone can give any person the right of taking the property of another without his consent on payment of an adequate pecuniary compensation, and the right to light and air is as much property as the land which enjoys this easement on the land of another. *Dunball* v. *Walters.* vol. 35, p. 565

"AND" READ "OR."

[*See* "OR" READ "AND," VESTING.]

1. On the construction of a will, held that the word "and" could not be read disjunctively as "or." *Seccombe* v. *Edwards.* vol. 28, p. 440

2. Bequests to *A.* for life, and, after his decease, to his eldest son; but in case *A.* should "die under age and without issue," over. Held, that the word "and" was not to be read "or," and that *A.*'s son, in his father's lifetime, took a vested interest, not subject to be divested. *Malcolm* v. *Malcolm.* vol. 21, p. 225

3. A testator gave to each of four persons, when and as they respectively attained twenty-one, one-fourth of his residue for life, and in case either of them "should happen to die under the age of twenty-one years *and* without leaving lawful issue," then he gave his share to the survivors for life. And from and after the decease of either of the legatees leaving lawful issue surviving, he bequeathed his share to such issue. And if all four legatees should die without leaving lawful issue, there was a gift over. One of the legatees attained twenty-one and died without issue:—Held, that her share was undisposed of, the Court being of opinion that "and" could not be read "or." *Coates* v. *Hart.* vol. 32, p. 349

4. A testator gave his residue to his nephew

for life, and after his decease, provided he should leave a child surviving, then to such persons as he should by will appoint; but if his nephew should die without leaving any child him surviving, "and" should not "make any appointment as aforesaid," then to *A.*, *B.* and *C.* Held, first, that "and" could not be read "or;" secondly, that the power to appoint only arose provided the nephew left a child surviving him; consequently, that an appointment by the will of the nephew, who died childless, was inoperative, and that *A.*, *B.* and *C.* were entitled. *Barker* v. *Young.* vol. 33, p. 353

5. A power of sale and exchange was given to the trustees of a settlement, at the request of the person for the time being "seised of the freehold and inheritance of the manors," &c. Held, that reading the word "and," conjunctively, the power could not be exercised at the request of a tenant for life who (subject to intervening limitations) had the ultimate remainder in fee. Held, also, that the word "and" could not be read disjunctively as "or." *The Earl of Malmesbury* v. *The Countess of Malmesbury; Phillipson* v. *Turner.* vol. 31, p. 407

ANNUITY.

[*See* ABSOLUTE INTEREST.]

1. The dividends of a sum in court being insufficient for the payment of an annuity charged upon it, a prospective order was made for the sale, from time to time, of so much of the corpus as would, together with the dividends, be necessary for raising the amount of the annuity. *Hodge* v. *Lewin.* vol. 1, p. 431

1. A sum of money in the 5 per Cents., set apart to answer an annuity, was reduced to 3¼ per Cents., and the dividends having become insufficient to pay the annuity, the Court made a prospective order for the sale, from time to time, of a sufficient part of the capital to meet the accruing payments of the annuity. *Swallow* v. *Swallow.* vol. 1, p. 432, n.

2. A perpetual annuity was granted by king *Charles* II. to *A.* and his heirs, payable out of the coal duties. Held, that though descendable to the heirs, it was personal and not real estate. *Radburn* v. *Jervis.* vol. 3, p. 450

3. Power to appoint an annuity held, under the circumstances, to authorize the appointment of the principal sum invested in the funds for securing it. *Samuda* v. *Lousada.* vol. 7, p. 243

4. Held, that the annuitants were not entitled to be paid the arrears out of the *corpus*, though the rents were insufficient to keep down all the incumbrances. *Philipps* v. *Philipps.* vol. 8, p. 198

5. A testator gave to each of his five daughters 400*l.* per annum, for their lives; and after their respective deceases, he gave the same to their children respectively; and in case any of the daughters died without issue, the annuity to cease. Held, that the children of the daughters took for life only a proportion of the annuity. *Hedges* v. *Harpur.* vol. 9, p. 479

6. A testator gave several life annuities, one of which was (expressed in the alternative) either 10*l.* a year, or 5*l.* and a tenement (part of the *N.* estate), and he charged them all on the *N.* estate. Held, that all the annuities were charged exclusively on that estate. *Lomax* v. *Lomax.* vol. 12, p. 285

7. A testator directed the investment of his property in the funds, and bequeathed to *A. B.* 50*l.* per year for her and her three children; and, after her decease, the "money" to be paid to each of them, as they attained the age of twenty-one; but, if either of them died, to be paid to the survivors. Held, upon the context, that this gave a perpetual annuity, or such a sum in the funds as would produce 50*l.* a year. Where there is a simple bequest of an annuity, it implies no more than a gift for life, unless there is something else in the will to enlarge the gift. *Potter* v. *Baker.* vol. 13, p. 273

8. A testator (subject and charged with the payment of his annuities) devised his real estate to trustees, as to part for his wife for life, and then, in the first place, out of the rents, to pay the annuities, and subject to the life estate of his wife and the annuities, to *A.* for life, &c. &c. Held, that the real estates were liable to be sold for payment of the arrears of the annuities. *Picard* v. *Mitchell.* vol. 14, p. 103

9. A testatrix being entitled to an annuity during the life of *B.*, effected an assurance on *B.*'s life, and bequeathed the annuity to *C.* Held, that the policy did not pass. *Hamilton* v. *Baldwin.* vol. 15, p. 232

10 A testator directed his property to be invested in the funds, for the best advantage of those he should after name; and he bequeathed 50*l.* a year to *A.* for life, and, after her decease, then that the 50*l.* a year should go, half to *B.* and the other half to *C.* Held, that the annuity was perpetual, and that *B.* and *C.* were entitled to such a sum in the funds as would produce 50*l.* a year. *Potter* v. *Baker.* vol. 15, p. 489

11. Held, that arrears of an annuity were a charge upon the *corpus* of the trust property, and that the tenant for life was only bound to keep down the interest of such arrears. *Playfair* v. *Cooper*, *Prince* v. *Cooper.* vol. 17, p. 187

12. A testator directed his executors to

purchase, in their names, an annuity from government or any public company, for *A. B.* Held, that *A. B.* was entitled to have a government annuity purchased, and, at his option, to take the price in lieu of the annuity. *Ford* v. *Batley.* vol. 17, p. 303

13. Upon a bond with a penalty for securing an annuity. Held, that interest was not payable on the arrears, except from the date of the decree, as directed by the General Orders. A creditor is not entitled, under the 46th General Order of *August*, 1841 (Ord. xlii. 10), to interest "from the date of the decree," on a debt which accrues subsequently. *Lainson* v. *Lainson.* (No. 2). vol. 18, p. 7

14. A testator gave an annuity "from his funded property," which was insufficient to pay it. Held, that the deficiency must be made good out of the general assets. *Attwater* v. *Attwater.* vol. 18, p. 330

15. A bequest to *F. P.* of 60*l.* a year out of the 4*l.* per cent. bank stock, followed by a direction that it was not to be sold till after the death of *F. P.* and his wife, nor until his youngest child should attain twenty-one, is in point of duration a perpetual annuity. *Pawson* v. *Pawson.* vol. 19, p. 146

16. The *corpus* of an estate charged with annuities was held liable to their payment. *Byam* v. *Sutton.* vol. 16, p. 556

17. A testator directed two trustees to stand possessed of 5,000*l.*, in a certain event, "upon such trusts as were thereinafter declared concerning the sum of 20,000*l.*, thereinafter bequeathed in trust for the benefit of his son *William*, his wife and children." He afterwards bequeathed to two other trustees 20,000*l.*, in trust, upon a different event, to pay *William*'s wife an annuity of 200*l.* a year. Held, by the Master of the Rolls, that she was entitled to two annuities, one out of each fund, if the income were adequate. (Reversed by the Lord Chancellor.) *Hindle* v. *Taylor.* vol. 20, p. 109

18. Annuities held not payable out of *corpus. Ibid.*

19. The testator gave his real and personal estate, on trust to raise such a sum of money as, when invested, the dividends would realize the clear annual sum of 200*l.* a year, and to pay such dividends to his widow for life, and afterwards to stand possessed of the principal or trust moneys in trust for his brothers and sisters. There was a gift to the same person of the residue, "after raising thereout the money sufficient to realize the annuity to his wife. On a deficiency of assets, held, that the *corpus* was liable to make good the widow's annuity. *In re Baker*, *Baker* v. *Baker.* vol. 20, p. 548

20. The testator directed the investment in the funds of sufficient to produce 40*l.* a year, and the dividends to be paid to his wife for life, and he bequeathed his general residue and the fund invested (after her death) to other persons. An investment was made in Five per Cents., which were reduced and produced less than 40*l.* Held, that the widow was entitled to have the deficiency made good out of the *corpus* of the fund. *Mills* v. *Drewitt.* vol. 20, p. 632

21. Gift of "30*l.* each yearly, so long as *A.* and *B.* shall live." Held, to be several annuities to each during their several lives. *Lill* v. *Lill.* vol. 23, p. 446

22. An annuity was granted free of all taxes, "except the property tax," and the deed contained a proviso, that in case the income tax should be reduced, the reduction should enure to the benefit of the grantor. This proviso was omitted in the memorial. Held, that the memorial was sufficient. *Knight* v. *Bowyer.* vol. 23, p. 609

23. An annuity held payable out of the interest only of a fund, and not out of the *corpus*, and to fail upon a deficiency of the income. *Earle* v. *Bellingham.* (No. 1.) vol. 24, p. 445

24. Bequest of an annuity or rent-charge to *A.* for life, and after her decease, unto her children equally, to be applied in their maintenance until the youngest attained twenty-one, and then to be sold and the produce divided amongst them. Real estates were then devised to *B.* charged with the annuity. Held, that the rent-charge was perpetual and not for life. *Mansergh* v. *Campbell.* vol. 25, p. 544

25. Generally speaking annuities are legacies, although a distinction is made between them, in many cases, arising from the peculiar terms of the will. *Ward* v. *Grey.* vol. 26, p. 485

26. Trustees, who had a power to sell and mortgage and manage and receive the rents of an estate, were directed to pay a life annuity, out of the rents of any other moneys held by them upon the trusts. Held, that "other moneys" referred to those *ejusdem generis*, and that the annuity was payable out of income only and not out of capital. *Clifford* v. *Arundell.* vol. 27, p. 209

27. Under a trust, by sale or mortgage, of real estate, to pay, first, personal debts, and secondly, the mortgages on the estate, with a direction to pay an annuity to *A.* until the mortgages should be paid off. Held, that the annuity was payable until both the personal debts and mortgages had been satisfied. *Ibid.*

28. When the *corpus* of an estate charged by will with annuities is insufficient to pay the arrears, it will be divided between the annuitants in proportion to the value of their respective annuities. If all the annuitants be living at the period of the division, the value must be ascertained

as at the death of the testator. If they be all dead, the values must be taken to be the respective amounts of arrears; but if some be dead and others living, the value, as to the former, will be taken at the amount of their arrears, and as to the latter, at the amount of their arrears added to the calculated value of the future payments. *Todd* v. *Bielby*. vol. 27, p. 353

29. A testator bequeathed to his daughter a perpetual annuity of 250*l*. a year. By a codicil, he directed that, instead of the money being paid to her, it should be paid to trustees for her, and he proceeded thus:—"after my daughter *C.*'s death, I give the above money to be divided as follows:—to her sister *Anna M.* 100*l*. a year, and all the rest to be equally divided between her other brothers and sisters or their children." All her brothers and sisters predeceased *C.* Held, first, that *Anna M.* was entitled to a capital sum sufficient to produce 100*l*. a year. Secondly, that the grandchildren, who survived their parents, took by substitution; and thirdly, that they took *per stirpes*. *Timins* v. *Stackhouse*. vol. 27, p. 434

30. A testatrix directed a government annuity to be purchased for an annuitant, and declared, that the annuitant should not "be allowed to accept the value of the annuity in lieu thereof." Held, that this declaration was ineffectual, and that the annuitant was entitled to receive the purchase-money instead of the annuity. *Stokes* v. *Cheek*. vol. 28, p. 620

31. One of the liabilities of a testator's estate was a life annuity. Held, that in the administration of the estate, the annuitant was not entitled to the value of the annuity in a gross sum. *Yates* v. *Yates*. vol. 28, p. 637

32. The periodical payments of an annuity for which the testator was liable, held payable by the tenant for life and remainderman under his will, in proportion to the values of their respective interests in the estate; the property having, for some years, been unproductive. *Ibid.*

33. Life annuities bequeathed by will, to be issuing and payable out of leaseholds and personalty, with power to recover them when in arrear "by distress or sale," in like manner as rack rents are recovered by law. Held, to be charged on the income and not on the corpus. *Addecott* v. *Addecott*. vol. 29, p. 460

34. *A. B.*, resident in *Brussels*, was indebted to *C. D.*, resident in *London*. In *August*, 1838, *C. D.* went over to *A. B.* and settled accounts, and advanced him a further sum of money, and it was agreed that *A. B.* should give a *post obit* security for part, and his notes for the remainder of the debt. This was not completed, but in *January*, 1839, *C. D.* went over again, when it was arranged that *A. B.* should grant an annuity in lieu of the *post obit* security, and a bill at ten days was given by *A. B.* for the amount, which was delivered up upon the execution by *A. B.* of the annuity deed in *February* at *Brussels*. Held, that this was one transaction, that the annuity was granted for money or money's worth, and that the deed, not being enrolled, was void under the Annuity Act. Held also, that the contract was English and not Belgian. *Burgess* v. *Richardson*. vol. 29, p. 487

35. Life annuity bequeathed by will, held payable out of the *corpus* of the estate. *Howarth* v. *Rothwell*. vol. 30, p. 516

36. A testator bequeathed "a sum" of Consols to trustees for his daughter *L.* for life, with remainder to her children. By a codicil he directed "that the sum of 200*l*. per annum be added to the sum" by his will "granted to his daughter *L.* during her life, and invested in the same manner and trusts" as governed the will. Held, that the words "during her life" were words of reference and not of limitation, and that the gift by the codicil was of a sum sufficient to produce 200*l*. a year, which was to be held for the daughter for life, with remainder for her children. *Auldjo* v. *Wallace*. vol. 31, p. 193

37. Bequest of an annuity to husband and wife "during their natural lives." The wife predeceased the testator. Held, that the husband was entitled to the annuity for his life. *Alder* v. *Lawless*. vol. 32, p. 72

38. A testator devised his real estates to trustees, upon trust, in the first place, out of the rents, issues and profits, to pay life annuities, "and, subject to the trusts aforesaid," to pay the residue of the rents, issues and profits to his four grandsons for life, and as any of them died, he devised one-fourth of the real estates to their children in tail. Held, that the annuities were not charged on the *corpus* of the estate. *Sheppard* v. *Sheppard*. vol. 32, p. 194

39. A sum of £5 per Cents. was held on trust to pay a number of annuities which originally exactly exhausted the income, and the capital was given over. The fund was converted into £3 per Cents., and, under a proviso, the annuities abated in proportion. Afterwards, by the death of an annuitant, the income again became sufficient to pay the existing annuities in full. Held, on the construction of the deed, that the existing annuitants were entitled to be paid in full their annuities. *Re Kenneth Mackenzie's Settlement*. vol. 32, p. 253

40. Upon the grant of an annuity during the grantor's life, the grantee undertook, that when the annuity "came to be paid off" and "as soon as the annuity was

redeemed" he would assign a policy on the grantor's life to the grantee. The policy was effected by and paid for by the grantee. Held, on the death of the grantor without having redeemed the annuity, that the representative of the grantor was not entitled to the produce of the policy, or even to the surplus beyond the redemption money. *Bashford* v. *Cann.* vol. 33, p. 109

Hawkins v. *Woodgate.* vol. 7, p. 565

41. The grant of an annuity, secured on land of which the grantor was seised in fee, was prepared by the solicitor of the grantee, and thereby the grantor covenanted that there were no incumbrances whatever on it. But it afterwards turned out, that the solicitor himself, with other persons, had a mortgage on the property. Held, that the grantee had not, through his solicitor, constructive notice of the mortgage, and that, although the interest on the mortgage rendered the annual value insufficient to pay the annuity, still that the deed was within the exception contained in the 53 *Geo.* 3, c. 14, s. 10, and did not require enrolment. *Thompson* v. *Cartwright.* vol. 33, p. 178

42. *A. B.* granted a life annuity of 139*l.* for five years, secured on fee simple lands, and after that period the annuity was to be increased to 199*l.* Held, that in determining the annual value, under 53 *Geo.* 3, c. 14, s. 10, the land must be considered as charged with the larger annuity. *Ibid.*

43. A testator directed a sale of his estate and a sufficient sum to be laid out in the funds to produce annuities for his nieces, and he gave his residue to his wife for life. Held, that the surplus income, after paying the annuities which occurred prior to the sale and investment being made, was liable to make up the fund necessary to produce the annuities, and that it did not belong to the widow. *Anderson* v. *Anderson.* vol. 33, p. 223

44. A testator gave to the Plaintiff an annuity of 100*l.* for life, "to be raised out of his freehold property." This consisted of a reversion, subject to a life estate, in freeholds which trustees had power to lease, sell and exchange. Held, that the annuity was payable from the testator's death, and that the Plaintiff was entitled to have the payment of it provided for by a sale of the reversion. *Pettinger* v. *Ambler.* vol. 34, p. 542

45. A testator directed his trustees to convert the residue of his real and personal estate, and to invest so much money as would produce 200*l.* a year, and to pay it to his wife during her life. And he gave the residue, not wanted for that purpose, to other persons. The widow survived five years, and the deficiency of the income of the residue to pay her annuity amounted to nearly 700*l.* Held, that the deficiency was payable out of the *corpus.* *Percy* v. *Percy.* vol. 35, p. 295

ANSWER.

[*See* DISCOVERY, EXCEPTIONS, SUFFICIENCY OF ANSWER, TIME TO ANSWER.]

1. A joint and several answer filed for two persons, by a solicitor having authority from one only, will not be ordered to be taken off the file on the application of one party in the absence of the other. *Wiggins* v. *Peppin.* vol. 2, p. 403

2. The rule, that where a Defendant submits to answer he must answer fully, does not apply where the matter of discovery is immaterial to the relief sought by the bill. *Wood* v. *Hitchings.* vol. 3, p. 504

3. Where a Defendant is called on to answer an interrogatory of a specified number, he must answer all the succeeding questions, until he comes to the next number. *Boutcher* v. *Branscombe.* vol. 5, p. 541

4. A motion for an injunction and receiver being brought on, stood over at the request of the Defendant, who filed his answer the next day. Held, that the Plaintiff might use affidavits subsequently filed, in contradiction to the answer, and which, under these circumstances, must be treated as an affidavit. *Gibson* v. *Nicol.* vol. 6, p. 422

5. As to the necessity of infants and the Attorney-General raising the points of their defence specifically, by the answer, instead of putting in what is termed the common answer. *Lane* v. *Hardwicke.* vol. 9, p. 148

6. Proceedings of contempt for want of answer stayed, on proof of the Defendant's inability, by reason of illness, to put in his answer. *Hicks* v. *Lord Alvanley.* vol. 9, p. 163

7. Where a bill was amended before answer, an answer expressed to be "to the bill of complaint &c.," is regular; but where the amendments take place after answer, the subsequent answers should be headed, "to the amended bill of complaint." *Rigby* v. *Rigby.* vol. 9, p. 311

8. A Defendant submitting to answer, cannot avail himself of Order xv. 4, and decline to answer part of the bill, on the ground that the bill is wholly demurrable. *Fisher* v. *Price.* vol. 11, p. 194

9. A Defendant in custody for want of answer filed a written answer, and was discharged; but he neglected to file a printed answer. The Court refused to direct the Record and Writ Clerk to issue his certificate, to enable the Plaintiff to set down the cause for hearing. *Bloxam* v. *Chichester.* vol. 34, p. 76

APPEAL.

[*See* DISCHARGE OF ORDERS.]

1. The time appointed for redemption enlarged, on terms, pending an appeal to the House of Lords. *Finch* v. *Shaw*, *Colyer* v. *Finch*. vol. 20, p. 555
2. Defendant ordered to pay costs, appealed. A motion, that upon payment of the amount into Court, proceedings to compel payment might be stayed pending the appeal, on the ground that the Plaintiff would be unable to repay them, was refused. *Archer* v. *Hudson*. vol. 8, p. 321
3. Motion by a party to a suit to stay proceeding to sell an estate pending an appeal, refused with costs, the applicant not having himself appealed. *Rowley* v. *Adams*. vol. 9, p. 348
4. A demurrer had been allowed with costs, but an appeal had been heard, and was standing for judgment. A motion to stay the proceedings for costs was refused with costs. *Bainbrigge* v. *Baddeley*. vol. 10, p. 35
5. Application by vendors, in a suit for specific performance, to suspend the execution of the conveyance pending an appeal to the House of Lords, refused, the purchaser consenting that notice of the appeal should be indorsed on the conveyance. *Wilson* v. *The West Hartlepool, &c. Railway Company*. (No. 2.) vol. 34, p. 414

APPEARANCE.

[*See* ENTERING APPEARANCE, PETITION (COSTS).]

1. The Defendant having made default in entering his appearance, and the service of the *subpœna* and order having been properly authenticated, the Court, under the 4 & 5 *Will.* 4, c. 82, ordered an appearance to be entered by the six clerk. *Dodd* v. *Webber*. vol. 2, p. 502
2. Privileged Defendant who had appeared, held not to have waived his right to insist on his privilege by demurrer. *The Duke of Brunswick* v. *King of Hanover*. vol. 6, p. 1
3. Where a Defendant has entered a special appearance, it is not necessary to enter a memorandum of service of the copy bill. *Attorney-General* v. *Donnington Hospital*. vol. 12, p. 551
4. Parties against whom a supplemental order had been made, under the 15 & 16 *Vict.* c. 86, s. 52, not having entered their appearance, liberty was given to the Plaintiff to enter an appearance for them. *Cross* v. *Thomas*. vol. 16, p. 592
5. A Plaintiff entered an appearance for a Defendant, and he afterwards amended his bill. Held, that it was unnecessary to enter a second appearance, but that the Defendant being served with the amended bill, his time to demur or put in a voluntary answer ran from the time of such service. *Cheeseborough* v. *Wright*. vol. 28, p. 173

APPOINTMENT.

[*See* NEW TRUSTEE, POWER (EXECUTION).]

1. Where there is an absolute appointment to *A.*, an object of the power, followed by a qualification limiting the interest of *A.* to a life interest, with remainder to persons not objects of the power, the latter being void. *A.* takes absolutely under the prior appointment. *Gerrard* v. *Butler*. vol. 20, p. 541
2. A trust term was created for raising the sum of 10,000*l.*, with interest from the death of the tenant for life, for his younger children as he should appoint, and in default to them equally. He appointed the fund to his two younger children, in unequal proportions, *after the decease of himself and of his mother*. Held, that the intermediate interest, between the death of the tenant for life and his mother, was unappointed, and that it belonged to the two children equally, and did not pass as accessory to the capital appointed. *Watts* v. *Shrimpton*. vol. 21, p. 97
3. Devise to the use of such of the children of *A. B.* and their heirs, "for such estates," and in such manner and form as *A. B.* should appoint. Held, upon the context, to authorize an appointment to a grandchild. *Fowler* v. *Cohn*. vol. 21, p. 360
4. A power to appoint an estate authorizes an appointment to trustees to sell and divide the produce between the objects. *Ibid.*
5. Hereditaments were, by deed of 1836, conveyed to a trustee for sale, the produce to be held as *A.* and *B.* should appoint. Part of the property was taken by a railway company, and the purchase-money was laid out in the purchase of cottages, which, in 1850, were conveyed to the trustee. In 1851, by deed poll, reciting that, by the settlement, the property (describing it) had been conveyed to the uses above mentioned, *A.* and *B.* appointed all the moneys to arise from the sale of the aforesaid hereditaments, and the said hereditaments until such sale. Held, that the cottages were not included in the appointment. *Collinson* v. *Collinson*. vol. 24, p. 269
6. *A. B.* had, under her father's will, a power to appoint 10,000*l.* By changes in the investment, the fund had increased to 11,495*l.*, of which 10,000*l.* was lent on mortgage to *C.*, and 1,495*l.* on mortgage to *A. B.* By her will, after reciting the power in her father's will to appoint 10,000*l.*, *A. B.*, in exercise of her power, appointed "the said

sum of 10,000*l.* now secured on mortgage of *C.'s* estate, and any other moneys representing the same." Held, that the whole 11,495*l.* was well appointed. *Collinson* v. *Collinson.* vol. 24, p. 269

7. A testatrix had ground rents of her own, and ground rents of which, under the will of her husband, she was tenant for life, with power to appoint to her children. By her will, she gave a son an annuity, payable "out of my ground rents." The court having held, on another clause of her will, that "my property" included the husband's also, came to the conclusion, that "my ground rents" also included the husband's. *Reid* v. *Reid.* vol. 25, p. 469
8. A testatrix having property of her own, and a power to appoint to her children other property of which she was tenant for life, gave "the whole of the residue of her property," &c. ("except her freehold property" disposed of by a contemporaneous codicil) to *A.* The excepted freehold property was part of the subject of the power. Held, in consequence of the exception, that the residue of the property subject to the power passed. *Ibid.*
9. An appointment was made to a person not an object of a power, with remainder to an object. The first appointment being void, it was held, that the second was not accelerated, but failed with the first. *Ibid.*
10. A power was given to *A. B.* to appoint a fund by will to his wife alone, or to his wife and such of his children as he should direct. The wife died, and *A. B.* appointed the fund exclusively to five out of his seven children. Held, that the appointment was valid. *Paske* v. *Haselfoot.* vol. 33, p. 125
11. A tenant for life had a power to appoint 5,900*l.* consols. She appointed 1,400*l.* to each of her three sons, but not to vest until her death, and reserved to herself a power of revocation. She also appointed, irrevocably, to her daughter the residue of the 5,900*l.*, after setting apart a sufficient portion to satisfy the appointment to the three sons, to vest in the daughter *instanter.* Held, that the appointment to the daughter comprised only a residue, after deducting 4,200*l.*; and the appointment in favour of two of the sons having failed by their deaths in the life of the appointor, held, that the shares intended for them went as in default of appointment. *Lakin* v. *Lakin.* vol. 34, p. 443
12. *A.* and his wife had a power of appointing a fund to the children, which, in default, was settled on the children who attained twenty-one, and in default thereof, on the next of kin of the wife. There were powers of maintenance and advancement. There being but one child, of the age of three, of robust health, and the wife being seriously ill, *A.* and his wife appointed the whole fund to the child, reserving a joint power of revocation. The child died three years after, an infant, and her father became entitled to her property. The appointment was held valid. *Beere* v. *Hoffmeister.* vol. 23, p. 101
13. A tenant for life had power to appoint, to any of his children, an estate, which, in default, was limited to his eldest son in fee. The eldest son attained twenty-one in *January*, 1841, and in *February* the father appointed the estate to him absolutely. In *May*, the father and the son mortgaged the estate for the father's debts, and in *July* the father and eldest son conveyed the estate to a trustee, to indemnify the son against the mortgage debts, and then to sell and divide the surplus between all the children equally. *Semble*, that the latter deed was not void as part of a transaction constituting a fraud on the power. But held, that the deed of *July* must be treated as valid until set aside by an independent proceeding for that purpose in a suit, by a younger child, to carry it into execution. *Beddoes* v. *Pugh.* vol. 26, p. 407
14. A testator gave his real and personal estate to his wife for life, and after her decease "unto and amongst his three children, *P.*, *E.* and *T.*, and their lawful issue, in such proportions, manner and form, and subject to such charges, &c. as his wife should appoint." Held, that in default of appointment, the children took estates tail, and that an appointment to a deceased child and the heirs of her body was invalid. *Martin* v. *Swannell.* vol. 2, p. 249

APPORTIONMENT.

[*See* APPORTIONMENT ACT, APPORTIONMENT OF COSTS, EQUALITY, LIFE TENANT AND REMAINDERMAN.]

1. A testator directed his trustees to invest 1,400*l.* for his widow for life, with remainder to his daughter for life, and 800*l.* for his daughter for life. And after the death of his daughter, he gave the two sums to her children, and if she died unmarried (which happened) he gave the said principal sums of 1,400*l.* and 800*l.* in manner following:—800*l.*, "part thereof," to *A.*, "and the remainder of the said sums" to *B.* The daughter died in the life of the widow unmarried. Held, that the 800*l.*, thus released, was divisible between *A.* and *B.* in the proportion of eight to fourteen. *Hewitt* v. *George.* vol. 18, p. 522
2. This Court has no jurisdiction to order the cancellation of articles of apprenticeship and the return of a portion of the premium, on the ground of the wrongful refusal of

the master to continue to instruct his apprentice in his trade, according to his agreement. *Webb* v. *England.* vol. 29, p. 44

APPORTIONMENT ACTS.

1. A life estate in realty was created by a deed in 1787. The estate was sold, and invested in 1821 in consols. The tenant for life died on the 9th of *December*, 1841. Held, that her executors were not entitled to an apportionment of the dividends under the *4 & 5 Will. 4*, c. 22. *Michell* v. *Michell.* vol. 4, p. 549
2. Executors were directed to apply a competent part of the interest of a fund towards the maintenance and education of the testator's son, during his minority, and accumulate the rest; and, after he attained twenty-one, to apply a moiety of the dividends for his support till he attained twenty-five, and to transfer the fund at twenty-five, with a gift over if he died between twenty-one and twenty-five. The son attained twenty-one between the periods of payment of the half-yearly dividends. Held, that there should be no apportionment, and that he was entitled to the whole half-yearly dividend received after he came of age. *Campbell* v. *Campbell.* vol. 7, p. 482
3. The "instrument" referred to in the Apportionment Act is not the instrument creating the periodical payments, but that creating a life interest therein. *Knight* v. *Boughton.* vol. 12, p. 312
4. A testator died in 1838, having, by his will, given real estates to trustees, in trust, after keeping up his mansion, &c., to pay five-eighths of the net rents to his widow for life. The widow died in 1847, and rents were receivable on the next rent day, under leases created by the testator anterior to the Apportionment Act. Held, that the rents were apportionable. *Ibid.*
5. The income of a fund belonging to a charitable corporation, having for its object the support, relief and maintenance of a master and five poor persons, held apportionable between the new and the representatives of deceased masters, though not within the Apportionment Acts. *Attorney-General* v. *Smythies.* vol. 16, p. 385
6. Apportionment in case of partnership. *Astell* v. *Wright.* vol. 23, p. 77
   Airey v. *Borham.* vol. 29, p. 620
7. Royalties payable periodically under leases granted subsequent to the Apportionment Act (1834) by a tenant for life under a power contained in a settlement prior to that act. Held, apportionable. *Llewellyn* v. *Rous.* vol. 35, p. 591
8. The Apportionment Act (1834) applies both to the case where the instrument creating the life interest is subsequent to that act, and also where the lease is subsequent to it. *Llewellyn* v. *Rous.* vol. 35, p. 591

APPORTIONMENT OF COSTS.

1. Costs of suit apportioned between real and personal estate. *Johnston* v. *Todd.* vol. 8, p. 489
2. An information related to two objects, one failed, and the decree dismissed so much of the information as related to it, without costs, and ordered the Defendant to pay the informant his costs of the suit. Held, that the Taxing Master was wrong in apportioning the general costs of suit between the two objects. *The Attorney-General* v. *Lord Carrington.* vol. 6, p. 454

APPRENTICE.

1. A fiat of bankruptcy issued against the master of an apprentice, but was afterwards annulled, by means of a composition between the bankrupt and his creditors. Held, that the indentures of apprenticeship were discharged. *Allen* v. *Coster.* vol. 1, p. 274
2. This Court has no jurisdiction to order the cancellation of articles of apprenticeship and the return of a portion of the premium, on the ground of the wrongful refusal of the master to continue to instruct his apprentice in his trade, according to his agreement. *Webb* v. *England.* vol. 29, p. 44
3. A bill for the specific performance of articles of apprenticeship cannot be maintained. *Ibid.*
4. Jurisdiction in case of apprentice. *Therman* v. *Abell.* vol. 29, p. 58

APPROPRIATION OF ASSETS.

1. An executor, who was also trustee, divided the assets: he paid to the adult legatees their shares, and invested the shares of the infants in his own name, but he executed no declaration of trust thereof: he afterwards applied these sums to his own use. Further assets having unexpectedly fallen in: Held, that they ought, in the first instance, to be applied in making good the infants' legacies. *Wilmott* v. *Jenkins.* vol. 1, p. 401
2. A mortgagor died, and a bill was filed by the mortgagee for the administration of the estate, and payment of the mortgage. The mortgaged property was sold, and the produce paid into Court to a general account, and accumulated for a series of years. Held, that the mortgagee had no right to treat the fund as appropriated to the mortgage, and take the accumulations. *Irby* v. *Irby.* vol. 22, p. 217

APPROPRIATION OF PAYMENTS.

1. *A. B.*, an equitable mortgagee, lent the title deeds to *C. D.*, the mortgagor, to enable him to arrange a sale of the property. *C. D.* was indebted to *A. B.*, both on the mortgage and on a trade account, *C. D.* paid to *A. B.* a part of the produce of the sale; but there was no evidence of his having made any express appropriation of that payment. Held, that it must be understood that the payment was made on the mortgage account, and that *A. B.* had no right to appropriate it to the trade account. *Young* v. *English.* vol. 7, p. 10
2. *A. B.*, a married woman, conveyed her separate estate to *C. D.*, in trust to sell, &c., and pay a debt due to him from her, and further advances, not exceeding in the whole 400*l.*, and to hold the surplus for her separate use. *C. D.* afterwards made further advances far exceeding the limit, part of which was paid upon bills drawn on him by *A. B.* with directions "to charge the same to the account of" her separate estate. Held, that *C. D.* was not entitled to appropriate his receipts, in the first place, in payment of the advances not covered by the security, and that, upon the true construction of the instruments, *C. D.* was bound to apply the separate estate which he received, in satisfaction of the charge, and could only consider the surplus, after such satisfaction, as subject to the disposition of *C. D.*, or liable to such ordinary lien as he might acquire by advancing money to her. *Smith* v. *Smith.* vol. 9, p. 80
3. The rule in *Clayton's case* (1 *Mer.* 572), that subsequent payments must be appropriated to the discharge of the oldest debts, has ever since been acted on. *Re Medewe's Trust.* vol. 26, p. 588
   Laing v. *Campbell.* vol. 36, p. 3

APPURTENANCES.

1. A testator devised all the freeholds to which he might be entitled at his decease, "situate in the parish of *C.*, with their appurtenances." Held, that it did not pass pieces of land in two other parishes, which had always been let with the lands in *C.* as one farm, and occupied by the same tenant. *Evans* v. *Angell.* vol. 26, p. 202
2. It is settled by the earliest authority, repeated without contradiction to the latest, that land cannot be "appurtenant" to land, and the word "appurtenances" only includes incorporeal hereditaments, such as rights of way, &c., but does not include additional land. *Lister* v. *Pickford.* vol. 34, p. 576

ARBITRATION.

1. Several actions and suits being pending between the Plaintiff and Defendant, one of such actions came on for trial in the Queen's Bench, when, by consent, all matters in difference, including the suits at law and in equity then depending between the parties, were referred to arbitration. The Plaintiff in equity afterwards served a *subpœna* to hear judgment and set down the causes. The Court, on motion, set aside the *subpœna* with costs, and struck out the causes from the list. *Ambler* v. *Tebbutt.* vol. 2, p. 442
2. Arbitration clauses in deeds are not binding on the parties, so as to oust the jurisdiction of the Court. *The Earl of Mexborough* v. *Bower.* vol. 7, p. 127
3. Upon the face of an award, the arbitrator appeared to have improperly disallowed a sum of 818*l.* On an application to a Court of Equity to set aside the award, the Respondent offered to allow it. Held, nevertheless, that the award must be set aside. *Skipworth* v. *Skipworth.* vol. 9, p. 135
4. Upon a reference by order of this Court, the award may be enforced before it has been made a rule of Court. *Wood* v. *Taunton.* vol. 11, p. 449
5. A railway contractor, on the completion of the works, brought an action against the company to recover the balance. By an order of Court, all matters in difference were referred to arbitration, with full powers; and the Court was empowered to refer back the award from time to time. The award was made in *July*, 1848, and in *January*, 1850, the Company filed a bill, alleging fraud in the performance of the works practised in collusion with their engineer, and discovered since the award, and seeking to set aside the award, and have the accounts taken. A general demurrer was allowed, on the ground that the matter was already before another jurisdiction competent to reconsider the matter and decide all questions. *Londonderry and Enniskillen Railway Company* v. *Leishman.* vol. 12, p. 423
6. Refusal to refer to arbitration in pursuance of an agreement, is not of itself a sufficient reason for refusing costs to a successful party. *Lees* v. *Laforest.* vol. 14, p. 250
7. The committee of a benefit building society authorized the vice-president to purchase a real estate for the society, and furnished him with part of the funds. He purchased, but appropriated the estate to himself. Held, that the jurisdiction was not ousted by a rule of the society for referring disputes to arbitration. *Mullock* v. *Jenkins.* vol. 14, p. 628
8. An arbitrator in taking accounts, allowed

one party an interview in the absence of the other: the award was set aside. *Harvey* v. *Shelton*. vol. 7, p. 455

9. Misconduct on the part of the person applying, will not prevent the Court setting aside the award, for the matter concerns the due administration of justice. *Ibid.*

10. A motion was made to dismiss a bill in pursuance of an award: it came on upon the last day, on which, under the statute, an application could be made to set aside the award. The respondent then made objections to the award, and the motion was ordered to stand over, with liberty for the respondent to give notice of motion to dispute the award. Held, that this operated as an extension of the time. *Ibid.*

11. Accounts being directed to be taken by the Master, liberty was, by consent, given to the parties to submit to arbitration any question of account. The Court also gave liberty to the Master to adopt the conclusions, but would not, even by consent, make it compulsory. *Scale* v. *Fothergill*. vol. 8, p. 361

12. Parties entered into a contract to purchase a brewery and plant at a price to be fixed by arbitrators, who were to choose an umpire before entering upon the valuation. The arbitrators could not agree on an umpire. Held, that the Court had no authority, under the 17 & 18 *Vict.* c. 125, ss. 1, 2, to appoint an umpire for such a purpose. *Collins* v. *Collins*. vol. 26, p. 306

13. An arbitrator allowed two bills of costs sent to him by one side after the last meeting, without communicating them to the other side, and he being authorized under the reference to appoint an accountant "not objected to by any of the parties," appointed one without communicating with the parties. The award was set aside. *Re Tidswell*. vol. 33, p. 213

14. An arbitrator awarded that a sum which he found due from one party should "be forthwith paid and accounted for by him and brought into the trust accounts." Held, that this was too uncertain and fatal to the award. *Ibid.*

15. Observations as to remitting an award back to the same arbitrator under the 17 & 18 *Vict.* c. 125, s. 8. *Ibid.*

16. A railway company gave to a leaseholder the usual notice to treat, and it was referred to arbitration to ascertain the value of the premises and the damages sustained by the execution of the works and the compensation to be paid by the company in respect thereof. The arbitrator awarded 2,700*l.* as the compensation to be paid for all the leaseholder's interest, of whatever nature, in the leasehold. Upon a bill by the leaseholder for a specific performance. Held, that the award was bad, and the bill was dismissed with costs. *Wakefield* v. *The Llanelly Railway and Dock Company*. vol. 34, p. 245

ARTICLES OF ASSOCIATION.

[*See* SHAREHOLDER.]

ARTICLES OF PARTNERSHIP.

[*See* PARTNERSHIP.]

ASSENT TO LEGACIES.

[*See* EXECUTOR.]

ASSETS.

[*See* ADMINISTRATION, CONVERSION OF ASSETS, EXONERATION, FOLLOWING ASSETS, ORDER OF ASSETS, PAYMENT OF DEBTS AND LEGACIES.]

ASSIGNEE IN BANKRUPTCY.

1. The provisional assignee of an insolvent debtor having been made a Defendant to a suit by a mortgagee to foreclose the insolvent and those claiming under him, Held to be entitled to his costs, to be paid by the Plaintiff, who was to add them to his security. *Parker* v. *Burney*. vol. 1, p. 492

2. Official assignee of defaulting trustee whose estate had been distributed was refused costs. *Williams* v. *Nixon*. vol. 2, p. 472

3. Upon a taxation assignees of a bankrupt solicitor are personally liable for the costs of taxation of a bill of costs delivered by them, where more than one-sixth is taken off. *Re Peers*. vol. 21, p. 520

Re Peile. vol. 25, p. 561

4. *Bonâ fide* sale of bankrupt's property by the creditors' assignee alone, without the concurrence of the official assignee, held valid. *In re Ward's Legacy*. vol. 26, p. 207

5. A vendor resisted a bill for specific performance. He became bankrupt, and his assignee afterwards continued the resistance, but failed at the hearing. Held, that the assignee must pay the plaintiff's costs of suit incurred subsequent to the bankruptcy. *Foxwell* v. *Greatorex*. *Foxwell* v. *Turner*. vol. 33, p. 345

ASSIGNMENT.

[*See* EQUITABLE ASSIGNMENT, ASSIGNMENT PENDENTE LITE, CHOSE IN ACTION.]

ASSIGNMENT PENDENTE LITE.

1. The Plaintiff in a bill to redeem transferred the mortgage property *pendente lite*. Held, that the suit could not proceed in the absence of the transferee. *Johnson* v. *Thomas*. vol. 11, p. 501
2. Pending a suit by a mortgagor for redemption, the Plaintiff became an insolvent, and he also aliened the property. Neither his assignees nor his alienee were made parties, and in their absence an order was made foreclosing the Plaintiff. Held, that the assignees in insolvency were not bound by it, the assignment to them by the insolvent being *in invitum*, but that it was binding on the alienee *pendente lite* and those claiming under him. Held, also, that the latter could not avail themselves of the objection of the absence in the suit of the former. *Wood* v. *Surr*. vol. 19, p. 551

ATTACHMENT.

[*See* ATTACHMENT OF PERSON, SUBPŒNA.]

ATTACHMENT OF PERSON.

1. A second attachment ordered, where Defendant had been discharged for not having been brought up in time. *Robey* v. *Whitewood*. vol. 7, p. 77
2. The old practice does not authorize a party prosecuting a contempt to make out process into a county, in which it is known the party prosecuting is not. *Boschetti* v. *Power*. vol. 8, p. 180
3. According to the old practice, an attachment returnable immediately could not be issued without a previous order. *Ibid.*
4. An attachment for want of answer returnable immediately against a Defendant resident out of the jurisdiction is irregular. *Zulueta* v. *Vinent*. vol. 15, p. 273
5. An attachment issued against Defendants in the County Palatine for not making an affidavit of documents. The sheriff, after caption, let the Defendants out on bail, they having filed the affidavit. The sheriff being afterwards ordered to return the writ, made default, and on a motion that he should return the writ or stand committed: Held, that it was not competent for the sheriff to object to the first order, on the ground that it ought to have been directed to the Chancellor of the County Palatine of Lancaster and not to the sheriff; and secondly, that the Court would not, on this occasion, allow him to enter into the merits, to shew that the Plaintiffs had not been prejudiced by the irregularity, but that a return must be made. *Sugden* v. *Hall*. vol. 28, p. 263
6. An order for an attachment may be made *ex parte* against a *married woman* who has obtained an order to answer separately and has made default in putting in her answer. *Home* v. *Patrick*. (No. 1.) vol. 30, p. 405

ATTESTATION.

[*See* CODICIL, MORTMAIN, WILL.]

ATTORNEY.

[*See* SOLICITOR.]

ATTORNEY-GENERAL.

[*See* CHARITY, INFORMATION.]

1. The Attorney-General cannot be proceeded against by service of copy bill under the 23rd Order of *August*, 1841. *Christopher* v *Cleghorn*. vol. 8, p. 314
2. The Courts exercise over the Attorney-General the same authority which they exercise over every other suitor; and the Attorney-General would not, any more than any other suitor, be permitted to prosecute any proceeding which was merely vexatious, or had no legal object: but the Attorney-General conducts the proceedings on a *scire facias* according to his own judgment and discretion, and may, when he thinks fit, stay the proceedings, or enter a *nolle prosequi*. The control which the Attorney-General exercises is subject only to the responsibility to which every public servant is liable in the discharge of his duty, and subject to the jurisdiction which the Courts may have over him, upon a charge properly brought against him, for a negligent or erroneous performance of his duty. *The Queen* v. *Prosser*. vol. 11, p. 306
3. There is no such rule in equity, that the Attorney-General is not entitled to receive costs. *The Attorney-General* v. *The Corporation of London*. vol. 12, p. 171
4. Costs awarded to the Attorney-General to be paid by Defendants, who had failed in exceptions to the Master's report. *Ibid.*
5. The Attorney-General possesses the entire dominion over every information instituted in his name, whether it be filed *ex officio*, or at the instance of a relator. *The Attorney-General* v. *Haberdashers' Company*. vol. 15, p. 397

6. A special petition having been presented by relators in the name of the Attorney-General, the Court first directed the Attorney-General to be served, and at the hearing ordered the petition to stand over, with a request to the Attorney-General to certify the course he thought it desirable to adopt on the petition. The relators appealed, when the Attorney-General asked that the petition might be dismissed, which was done accordingly by the Lord Chancellor, with costs, notwithstanding the opposition of the relators. *Attorney-General* v. *Wyggeston's Hospital.* vol. 16, p. 313
See *Attorney-General* v. *Payne.* vol. 27, p. 168
7. The Attorney-General attended in a cause to which he was not a party, to support a claim for legacy duty upon a fund in Court. The claim failed. Held, that the Crown was not entitled to costs. *Hobson* v. *Neale.* vol. 17, p. 178
8. Rule as to the appearance of the Attorney-General in charity cases. *Ware* v. *Cumberlege.* vol. 20, p. 503
9. Power of the Attorney-General to sanction a compromise in charity cases. *Attorney-General* v. *Boucherett.* vol. 25, p. 116
10. A suit against a corporation to compel the performance of a public trust should be by information by the Attorney-General. *Evan* v. *The Corporation of Avon.* vol. 29, p. 144

AUCTIONEER.

[*See* OPENING BIDDINGS, RESERVED BIDDINGS.]

Semble, that a vendor cannot, after real estate has been knocked down at an auction, and before the signature of the written contract, revoke the authority of the auctioneer. *Day* v. *Wells.* vol. 30, p. 220

AUDITA QUERELA.

The Court declined to direct a writ of *audita querela* to issue upon an *ex parte* motion, saying that if it was a matter of right it would issue as of course; but that if the Court's judgment must be exercised, the other side must be present. *Troup* v. *Ricardo.* vol. 33, p. 122

AUTHORITY TO SUE.

[*See* SOLICITOR.]

1. A joint and several answer filed for two persons, by a solicitor having authority from one only, will not be ordered to be taken off the file on the application of one party in the absence of the other. *Wiggins* v. *Peppin.* vol. 2, p. 403
2. A petition was presented in the names of *A.* and *B.*, but without the authority of *A.* Held, that having regard to the rights of the Respondents, the petition could not be ordered to be taken off the file on the application of *A.* *Tarbuck* v. *Tarbuck.* vol. 6, p. 134
3. A bill being filed without the written authority of one of several co-Plaintiffs, and the evidence being unsatisfactory as to the retainer, his name was struck out as co-Plaintiff with costs to be paid by the solicitor. *Pinner* v. *Knights.* vol. 6, p. 174
4. A bill filed without the authority of the Plaintiff, was dismissed with costs, and the Plaintiff was taken under an attachment for nonpayment of costs. The Court, on motion, ordered the solicitor to indemnify *A.*, but refused to release *A.* as against the claim of the Defendants. Held also, that *A.* was not, on such application, to be deprived of his right against the solicitor to damages for his imprisonment. *Hood* v. *Phillips.* vol. 6, p. 176
5. The name of a person who had been made the next friend of an infant Plaintiff without his authority, ordered to be struck out, but liberty was given to the co-Plaintiffs to amend by naming a new next friend. *Ward* v. *Ward.* vol. 6, p. 251
6. As to the liability of the next friend in such a case as regards the Defendant. *Ibid.*
7. A suit was prosecuted through a solicitor, and, as the Plaintiffs alleged, without their authority. The Defendant gave notice of motion to dismiss the bill for want of prosecution, which, being served on the solicitor, he requested the Plaintiffs to name a new solicitor, which they refused to do. The solicitor then moved that he might be dismissed as solicitor. Held, that no such order could be made, but personal service on the Plaintiffs of the notice of motion to dismiss was ordered. The Plaintiffs took no step to relieve themselves from their liability. Held, that the Defendant was entitled to have the bill dismissed, with costs to be paid by the Plaintiffs, leaving them to obtain, as against the solicitor, any remedy they might have. *Tarbuck* v. *Woodcock.* vol. 6, p. 581
8. A bill of costs was taxed nominally at the instance of the client, but without his sanction, *quære* as to his remedy. *Re Thompson & Debenham.* vol. 25, p. 245

BANKER.

[*See* BANKING ACT.]

1. Explanation of the nature of the relation

between banker and customer. *Watts* v. *Christie.* vol. 11, p. 546
2. Bankers have no lien on the deposit of a partner of a firm on his separate account for a balance due to the bank from the firm. *Ibid.*
3. A fund was standing to the account of two trustees in the books of some bankers, who had notice that it was a trust fund. By the direction of the tenant for life alone they, in 1843, transferred it to his account, and thereby obtained payment of a debt due from him to them. Held, that the trustees might sue the bankers in this Court to have the trust fund replaced, and that the Statute of Limitations was inapplicable. *Bridgman* v. *Gill.* vol. 24, p. 302
4. A security given by a customer to his bankers for the balance "which shall or may be found due on the balance of" the account. Held, to cover the existing balance only, and not to be a continuing security for the floating balance. *Re Medewe's Trust.* vol. 26, p. 588
5. Where the account between a banker and his customer is kept at compound interest, and the customer dies, the final balance at his death, in the absence of contract, carries no interest. It is the same where the balance is in the customer's favour, and the banker dies, or ceases to carry on business, or becomes bankrupt. *Crosskill* v. *Bower*; *Bower* v. *Turner.* vol. 32, p. 86
6. When the accounts between banker and customer have been carried on for a series of years on a particular principle, the Court will assume there is an agreement to that effect; but acquiescence in it does not amount to a settlement of account. *Mosse* v. *Salt.* vol. 32, p. 269
7. Bankers had a mortgage and a banking account with their customer. Held, that in ascertaining the amount due between them, the accounts must, in the first instance, be taken separately and on different principles. *Ibid.*

BANKING ACTS.

1. The remedies given by the Banking Act (7 *Geo.* 4, c. 46) are not cumulative, but substitutional for the prior liabilities of partners, and therefore proceedings cannot be had against a party three years after he has ceased to be a member. *Barker* v. *Buttress.* vol. 7, p. 134
2. Under the 7 & 8 *Vict.* c. 32, the right of a country bank to issue notes belongs beneficially, on the death of a partner, to the surviving partner. *Smith* v. *Everett.* vol. 27, p. 446

BANKRUPTCY.

[*See* ASSIGNEE IN BANKRUPTCY, BANKRUPT TRUSTEE, FRAUDULENT PREFERENCE, REPUTED OWNERSHIP, SET-OFF.]

1. Proceedings in insolvency held not to be superseded by a subsequent bankruptcy founded on an act of bankruptcy prior to insolvency. *Sidebotham* v. *Barrington.* vol. 3, p. 524
2. Injunction granted to restrain a party from taking inequitable proceedings in bankruptcy. *Attwood* v. *Banks.* vol. 2, p. 192
3. After a demurrer had been put in to a bill, the sole Plaintiff became bankrupt. Upon the motion of the Defendant who had demurred, the Court ordered that the assignee should remedy the defect in the suit within a month, or that the bill should be dismissed without costs. *Lord Huntingtower* v. *Sherborn.* vol. 5, p. 380
Clarke v. *Tipping.* vol. 16, p. 12
4. *A.* died, and a considerable sum was due from his partner, *B.*, to his estate. *B.* continued the trade, with the assent of the executors, but at the end of six months they insisted on payment, or to have the business wound up; whereupon *B.* assigned to them his share in all the partnership assets, upon trust to pay the joint creditors, and then the debt due to *A.*'s estate, and the residue to *B.* Held, upon *B.*'s subsequent bankruptcy, that the assignment was not an act of bankruptcy. *Payne* v. *Hornby.* vol. 25, p. 280
5. *A.*, as surety to a firm, signed a joint and several bill of exchange. The firm having become bankrupt:—Held, that *A.*'s claim was of such a nature as not to be proveable under the bankruptcy, and therefore not barred by the certificate. *Rice* v. *Gordon.* vol. 11, p. 265
6. Form of reference under the 7 & 8 *Vict.* c. 111, in the case of a bankrupt joint-stock company. *In re The Fourth Marine Insurance Company.* vol. 9, p. 469
7. Under a marriage settlement the husband was entitled to a life interest in all the wife's after-acquired property. The husband became bankrupt, and obtained his certificate. The wife afterwards became entitled to the residuary estate of her deceased sister, as next of kin. Held, that the assignees were not entitled to the husband's life interest in this property. *In re Inkson's Trusts.* vol. 21, p. 310
8. Interests given to an uncertificated bankrupt, contingently on his obtaining his certificate. Held, to pass to his assignees on the happening of that event. *Davidson* v. *Chalmers*; *Perry* v. *Chalmers.* vol. 33, p. 653
9. A testatrix provided that in case her nephew, who was an uncertificated bankrupt, should obtain his certificate, so as to be enabled to hold and enjoy real and personal estate for his own absolute per-

sonal use, enjoyment and benefit, free from the control of any other person, the income of her residue should be paid to him for life, on his subsequent discharge, under the Bankruptcy Act. Held, that his life interest passed to his assignees as a contingent interest then coming into possession. *Davidson* v. *Chalmers; Perry* v. *Chalmers.* vol. 33, p. 653

10. A debt due by one partner in a firm to his co-partners cannot be proved against the joint estate until all the joint debts have been paid in full; but it can properly be proved against the separate estate of the debtor as soon as the joint debts of the partnership have been discharged by the solvent partner. *Scott* v. *Izon.* vol. 34, p. 434

11. Under an agreement for a lease for three years, with an option to the lessee to have an extension of the term, the option, on the bankruptcy of the lessee, passes, with the interest, to the assignees, under the 141st section of the 12 & 13 *Vict.* c. 106, and *semble* not as a power under the 147th section. *Buckland* v. *Papillon.* vol. 35, p. 281

BANKRUPT TRUSTEE.

1. An executor became bankrupt; his co-executors, who had become liable through his default for payments which they had made, were allowed to prove against his estate. *Lincoln* v. *Wright.* vol. 4, p. 427

2. *A.* authorized the sale of his share in a brewery to *B.*, his surviving partner, whom he appointed one of his executors. *B.* conceiving he had duly become the purchaser, carried on the business until his death, and it was subsequently carried on by *C.* his executor. Afterwards, upon a bill filed, the sale was set aside, and the estate of *A.* became entitled to share in the profits made subsequent to *A.*'s death. *C.* afterwards became bankrupt, having the whole trade property in his possession. Held, that the property was not within the order and disposition of the bankrupt. *Stocken* v. *Dawson.* vol. 9, p. 239

3. Where a trustee who is indebted to the trust becomes bankrupt, it is his duty to prove the debt, and if he neglect so to do, he is liable for the loss, notwithstanding his certificate. *Orrett* v. *Corser; Corser* v. *Orrett.* vol. 21, p. 52

4. When a testator has authorized the employment of his estate in trade, though the firm in which it is so employed becomes bankrupt, no proof can be made against the estate of the bankrupts, in respect of the money of the testator so employed. *Scott* v. *Izon.* vol. 34, p. 434

BAPTISTS.

The trusts declared of a chapel were "for the use and benefit of a congregation of Particular Baptists." The congregation were divided as to the doctrine of strict and free communion. On an information and bill to restrain the practice of free communion in the chapel, the Court, on the evidence, came to the conclusion, that each congregation of Particular Baptists had a right to regulate its own practice, except as to essential and fundamental doctrines of their faith. That the doctrine in dispute was not one of that character, but was an open question, and that the majority of full members might, notwithstanding a contrary usage since 1746, alter the practice in respect of communion, and adopt the practice of free communion or of strict communion, as they should, from time to time, think fit to determine. *The Attorney-General* v. *Gould.* vol. 28, p. 485

BENEFICE.

[*See* ADVOWSON, PATRONAGE, SIMONY.]

BENEFIT SOCIETY.

[*See* BUILDING SOCIETY.]

BEQUEATH.

The word "bequeath" is large enough to carry real estate if distinctly applied to it. *Whicker* v. *Hume.* vol. 14, p. 518

BEQUEST.

[*See* ABSOLUTE INTEREST, ACCELERATION, CHILDREN, CONDITION, CONTINGENT GIFT, DESCRIPTION OF GIFT, DEVISE, DYING WITHOUT ISSUE, GIFT TO A CLASS, LEGACIES, LIMITATION OF GIFT, REFERENCE (GIFT BY), SUCCESSIVE INTERESTS, VESTING.]

BILL.

[*See* CROSS SUIT, FILING BILL, INFORMATION, SUIT, TAKING BILL OFF FILE.]

BILL OF COSTS (DELIVERY).

[*See* TAXATION.]

BILL OF EXCHANGE.

1. A banking company, by its articles, had

a first and paramount lien upon the shares of any shareholder, "for all moneys due to the company from him." The bank held bills of a shareholder for a debt due to the bank. Held, that the amount of the bills was, before they arrived at maturity, "moneys due to the company," for which it had a lien on the shares, though the remedy for recovering the amount was postponed, and that, therefore, the lien on the bank had priority over a charge created on the shares by the shareholder before the bills arrived at maturity. *In re The London, Birmingham and South Staffordshire Banking Company (Limited).* vol. 34, p. 332

2. Where a customer of bankers gets them to discount bills at a time when his account is largely overdrawn, and the amount is simply carried to the credit of his account, the bankers are *holders for value*, though no money was actually paid. *In re Carew's Estate Act.* (No. 2.) vol. 31, p. 39

BILL OF REVIEW.

1. Bill ordered, upon motion, to be taken off the file, on the ground that it was a supplemental bill in the nature of a bill of review, which ought not to have been filed without the leave of the Court. *Davis* v. *Bluck.* vol. 6, p. 393
2. A contract was entered into for the sale of the vendor's interest in a lease and premises at *Doncaster*, known as the betting rooms, for the remainder of the lease granted by *A.* A bill for specific performance was filed by the purchaser, in which and in the decree the agreement was treated as comprising the premises held of *A.*, and an account of the rents was directed. It turned out that the rooms and premises were partly under *A.* and partly under *B.*, whereupon the vendor filed a second bill, praying a declaration that the whole was comprised in the agreement. Held, however, that the Plaintiff could not, upon a rehearing, obtain the relief asked by the second bill, nor could he, by such second bill, obtain the relief thereby prayed, whilst the decree stood in its present form; that to obtain the relief asked, the original cause must be reheard with the second, and, consequently, that the second bill was a supplemental bill in the nature of a bill of review, which ought not to be filed without leave of the Court. *Ibid.*
3. Property was held by *A.*, *B.*, and *C.*, in trust for *D.* for life, with remainder to her children. The children filed a bill against the trustees for a breach of trust, and, by the decree, the trustees were ordered to replace the fund. *C.*, afterwards, being in contempt for nonperformance of the decree, filed a bill against the other trustees, and the tenant for life, alleging that they had received and retained the produce of the breaches of trust, and seeking to make them and the life estate liable to indemnify *C.* Held, that such a bill was not in the nature of a bill of review, and therefore that it might be filed without the leave of the Court. *Taylor* v. *Taylor.* vol. 12, p. 220
4. Decree made in favour of *cestuis que trusts*, upon an original bill and without a bill of review, upon the discovery of fresh evidence, although a contrary decree had previously been made in another suit as to the same matter, to which the *cestuis que trusts* were not parties. *Pierce* v. *Brady.* vol. 23, p. 64
5. *A.* insured his life and assigned the policy to *B.* *A.* became bankrupt, and *B.* died, having bequeathed the policy in trust for *C.* In a suit between the assignees of *A.* and the trustee, and in consequence of the trustee not having proved that notice of the assignment had been given to the office, the fund was ordered to be paid to *A.*'s assignee, as being within the order and disposition of the bankrupt. Parties claiming under *C.* afterwards filed their original bill against the assignee, and having proved that notice had been given, recovered the fund. *Ibid.*
6. A petition for leave to file a bill of review on newly discovered evidence cannot be sustained, if supported merely by an affidavit of the Petitioner upon his information and belief. *Thomas* v. *Rawlings.* (No. 3.) vol. 34, p. 50
7. Liberty given to file a bill of review, after a former petition for the same object had been refused on the ground of a deficiency of evidence. *Ibid.*
8. Upon an application to file a bill of review on the discovery of new evidence, the question is, whether the new evidence would have induced the Court to make a different decree; and, secondly, if the application is made with due diligence after the discovery. *Ibid.*
9. An estate was devised in equal moieties to two colleges on charitable trusts, and, upon an information relating only to one moiety, a decree had been made and enrolled. Held, that, having regard to the pleadings and parties, it was no bar to a subsequent information which embraced the two moieties. *The Attorney-General* v. *Sidney Sussex College, Cambridge; Trinity College, Oxford, and Frederick Greenhill.* vol. 34, p. 654

BILL TO PERPETUATE TESTIMONY.

[*See* PERPETUATION OF TESTIMONY.]

BLENDING ASSETS.

[*See* CHARGE OF DEBTS, ORDER OF ASSETS, PAYMENT (DEBTS AND LEGACIES).]

BOND.

[*See* DEBT, JOINT LIABILITY.]

1. Whether bonds issued by a public company, in which the names of the obligees are left in blank, are valid, *quære*. *In re Strand Music Hall Company* (*Limited*). vol. 35, p. 153
2. A bond was given by a broker to the Corporation of *London*, to secure the due performance of his duties. He made default. Held, on his death, that the corporation held the amount recovered on the bond as equitable assets, and in trust for the general body of his creditors, and not exclusively for those who had suffered by his defaults. *Nash* v. *Bryant*. vol. 25, p. 533

BONUS.

1. Bonuses on a policy held to be subject to the trusts of a marriage settlement. *Gilly* v. *Burley*. vol. 22, p. 619
2. Upon the construction of a settlement, it was held, that a policy effected in the names of trustees was itself settled; but that, under the covenant of the husband and the rules of the company, the husband was entitled to an option to have any bonus applied in reduction of the premiums. Bonuses having been declared, the husband continued to pay the full premiums, and it was held, on his death, that the bonuses were accretions to the trust, and did not belong to the executors. *Ibid.*
3. The manager of a chartered company bequeathed ten shares, specifically to his son. After the testator's death a large sum was recovered by the company from his estate, under a compromise sanctioned by the Court, in respect of the testator's defalcations. The company thereout declared a large *bonus*. Held, that such *bonus* did not belong to the specific legatee, but that it formed a portion of the residue. *Maclaren* v. *Stainton*. vol. 27, p. 460
4. Similar case as between a tenant for life and remainderman. *Edmondson* v. *Crosthwaite*. vol. 34, p. 30
5. A testatrix specifically bequeathed her *Carron Company's* shares upon trust to pay, yearly, "the dividends, interest and proceeds" to *A. B.* for life, with remainders over. She died on the 29th of *May*, but on the previous 26th of *May*, the company declared a large *bonus* on the shares, payable on the 10th of *June*. Held, that the *bonus* did not pass by the specific bequest. *Lock* v. *Venables*. vol. 27, p. 598
6. Bequest of the 2,000*l.* insured on my life with the *H. Company*. Held, to pass a bonus due at the testator's death. *Roberts* v. *Edwards*. vol. 33, p. 259

BOROUGH ENGLISH.

Devise, after a tenancy for life, of Borough English lands for sale, and to divide the moneys among all the testator's sons and daughters which might then be living, and to the heir and heirs of them which might be deceased, share and share alike. Held that, under the gift to the heirs, the common law and not the heirs in Borough English took. *Polley* v. *Polley*. vol. 31, p. 363

BOROUGH RATE.

[*See* MUNICIPAL CORPORATION ACT.]

BORROWING POWERS.

[*See* ULTRA VIRES.]

1. The 78th clause of articles of association limited the power of directors of borrowing to 10,000*l.*, unless authorized by a "general meeting." By the 35th clause, a "special meeting" might authorize the borrowing of such sums as it thought fit. Held, that the directors might be authorized to borrow beyond 10,000*l.*, either by a general or a special meeting. *In re Strand Music Hall Company* (*Limited*). vol. 35, p. 153
2. Whether bonds issued by a public company, in which the names of the obligees are left in blank, are valid, *quære*. *Ibid.*

BREACH OF TRUST.

[*See* CONVERSION OF ASSETS, DEVASTAVIT, INDEMNITY, INVESTMENT, PURCHASE BY TRUSTEE, TRUSTEE PROFITING BY TRUST.]

1. The interest of a *cestui que trust*, who concurs with a trustee in a breach of trust, is liable to indemnify the trustee. *Booth* v. *Booth*. vol. 1, p. 125
2. A trustee acting *bonâ fide* and with the concurrence of the heir at law, under a will which was supposed to be valid as to real estate, but which afterwards turns out to be invalid, is entitled to be indemnified out of the personal estate. *Edgecumbe* v. *Carpenter*. vol. 1, p. 171
3. The trustee of a marriage settlement concurred in a breach of trust, by lend-

ing the fund to the husband on a security not warranted by the settlement. Held, that the representatives of such trustee could maintain a bill against the husband and the other *cestuis que trusts*, for the restitution of the fund. *Greenwood* v. *Wakeford*. vol. 1, p. 576

4. A person knowingly inducing trustees to lend trust money to his debtor on a security not warranted by the trusts, in order that such debtor may obtain payment thereout of his debt, is accountable to the *cestuis que trusts*. *Fyler* v. *Fyler*. vol. 3, p. 550

5. Trustees investing trust money on an unauthorized security, are responsible for any future loss traceable to that first error. *Ibid.*

6. In the answer to a bill for relief in respect to a breach of trust, it was alleged that some of the *cestuis que trusts* had assented thereto. Held, that the parties sought to be charged were entitled to an inquiry. *Ibid.*
   See *Lincoln* v. *Wright*. vol. 4, p. 427
   Meyer v. *Montriou*l. vol. 9, p. 521

7. A father on the marriage of his daughter, agreed to pay, by way of portion, a sum of money to trustees, to be held in trust for the husband, daughter and children of the marriage in succession. The trustees named in the settlement having refused to act, the father paid the money to the husband. Held, that the payment was wrongful; and the money having been lost, that the father was held liable, at the suit of a child of the marriage, to pay it a second time. *Evans* v. *John*. vol. 4, p. 35

8. Consols were settled to the separate use of the wife for life, with a power to appoint it by will, and the settlement contained a power for the trustees, with the consent in writing of the wife, to alter the securities. The trustees, without such consent, sold the Consols, and invested the produce in Long Annuities, which they afterwards sold and lent the money on bond, which was afterwards received by the husband, who invested it in leaseholds. The wife received the Long Annuities until sold, and afterwards joined her husband in executing a deed, reciting that the sale of the Long Annuities and the subsequent investments had been with her consent. Held, that the appointees of the fund under her will were entitled, as against the husband and trustees, to have the Consols replaced, and that the interest over which the wife had a general power of appointment was not liable to make good the breach of trust. *Kellaway* v. *Johnson*. vol. 5, p. 319

9. A trustee wilfully applying trust moneys to his own use is chargeable with interest at 5*l.* per cent.; but where, under the trusts of a doubtful will, the tenant for life, who was also a trustee, neglected to make proper investments, she was held chargeable with interest at 4*l.* per cent. only, and the decree was made without costs. *Mousley* v. *Carr*. vol. 4, p. 49

10. If trustees are directed to invest trust money on government or real securities, and they do neither, they are answerable, at the option of the *cestuis que trusts*, either for the money or the stock which might have been purchased therewith. *Watts* v. *Girdlestone*. vol. 6, p. 188
    See *Ames* v. *Parkinson*. vol. 7, p. 379
    Pride v. *Fooks*. vol. 2, p. 230
    Sadler v. *Lee*. vol. 6, p. 324
    Watts v. *Girdlestone*. vol. 6, p. 188

11. A trustee was empowered to invest in the public funds or on real security. He had in his hands a sum, which, in the interval between receiving and investing in a contemplated real security, he invested in exchequer bills, which he left in the hands of a broker, who misapplied them. Held, that the trustee having *exercised his discretion*, though improperly, was liable for the value of the exchequer bills at the time of the loss, and not for the stock which the money would have purchased. *Matthews* v. *Brise*. vol. 6, p. 239

12. A trustee properly invested trust money in exchequer bills, but he left them undistinguished in the hands of a broker; upon a misapplication of them by the broker, held, that the trustee was personally liable. *Ibid.*

13. A municipal corporation were trustees of a charity. They permitted their town clerk to receive and retain the trust moneys, instead of seeing it applied to the purposes of the trust. Held, that the corporation and the town clerk were liable for the breach of trust. *Attorney-General* v. *Corporation of Leicester*. vol. 7, p. 176

14. Executors employing an auctioneer, who became insolvent, held, under the circumstances, not personally responsible for the loss of deposit. *Edmonds* v. *Peake*. vol. 7, p. 239

15. A trustee cannot, by contract, waive his right to resort to the life interest of a tenant for life, for the purpose of replacing a trust fund, which, in breach of trust, he has lent to the tenant for life. *Fuller* v. *Knight*. vol. 6, p. 205

16. Where trustees for sale sell the trust property, and place the conveyance, executed by them, and having their receipt endorsed, in the hands of a solicitor, who receives and misapplies the purchase-money, they are liable for a breach of trust. *Ghost* v. *Waller*. vol. 9, p. 497

17. If a trustee be sued in Chancery for an account, and it appears that he has properly expended sums of money for the protection and safety, or for the maintenance and support, of his *cestuis que trusts*

at a time when he, though adult, was incapable of taking care of himself, the Court will allow him credit in account, for such sums of money. *Nelson* v. *Duncombe.* vol. 9, p. 211

18. Trustees made personally responsible for the consequences of their neglect to enforce a covenant contained in a marriage settlement. *Fenwick* v. *Greenwell.* vol. 10, p. 412

19. By a marriage settlement it was covenanted and agreed, that 5,000*l.* Consols, part of the wife's property, should be transferred to trustees, upon certain trusts for the husband, wife and children. At the time of the settlement, a sum of 4,946*l.* was standing in the name of the wife; but the trustees took no steps to enforce a transfer, and it was sold out and misapplied by the husband. Held, that the trustees were personally responsible for the loss; and, secondly, that they were not relieved from their liability, by the trustee indemnity clause, declaring that they should not be liable "for any casual or involuntary loss," without their wilful default, but "for such monies only as should actually come to their hands." *Ibid.*

20. Trustees authorized to lay out trust money in the public funds *or* on mortgage, invested it on a mortgage. The mortgage was paid off, and the amount was received by the tenant for life, who, contrary to the trusts, invested it in real estate. Held, that the *cestuis que trusts* had the *option of charging the tenant for life*, either with the sum sterling received, or with the amount of 3 per cents. which might have been purchased therewith, at the time the breach of trust was committed. *Ouseley* v. *Anstruther.* vol. 10, p. 456

21. *A.*, on her marriage, assigned a debt due to her from *B.* to three trustees, upon trust, when requested by her, to call it in and invest it, and hold it in trust for *A.*, her husband, and children. *B.*, with full notice, but without such request, paid part of the money to the husband by order of the trustees, and other part to the trustees for the express purpose of being advanced to the husband in breach of trust. The money was lost. Held, that *B.*, as well as the trustees, was responsible for the breach of trust. *Andrews* v. *Bousfield.* vol. 10, p. 511

22. Where a testator prescribes a time for realizing his share in a trading concern in which he is a partner, and his legal personal representative extends that time to the surviving partners, who have notice of the trusts, the transaction is not so entirely vitiated, as to make the surviving partners accountable for the subsequent profits. *Chambers* v. *Howell.* vol. 11, p. 6

23. It is a rule, without exception, that to authorize executors to carry on a trade with the property of a testator held by them in trust, there ought to be the most distinct and positive authority and direction given by the will itself for that purpose. *Kirkman* v. *Booth.* vol. 11, p. 273

24. When trust funds are invested on several improper securities, the trustees, in accounting, are not entitled to set off the gain on one against the loss on the other. *Robinson* v. *Robinson.* vol. 11, p. 371

25. Where trustees authorized to invest on either of two kinds of *securities*, adopt neither, they are liable to be charged in a manner most beneficial to the persons entitled, and where they had done so for the benefit of the tenant for life who took on himself the responsibility. Held, that the *tenant for life could not exercise the option* against those in remainder. *Ibid.*

26. A sum of 3,000*l.* was vested in *A.* and *B.* on certain trusts. The *cestuis que trusts* mortgaged it to *C.* for 1,200*l.* and *C.* transferred the mortgage to *E.* and *F.* on family trusts, with power to *E.* and *F.* to give receipts. The solicitor of *A.* and *B.* having notice of the secondary trusts, paid the 1,200*l.* to *F.* alone. Held, that *A.* and *B.* were personally liable to repay the money, with interest and costs. *Hall* v. *Franck.* vol. 11, p. 519

27. In 1826 a debt due from a firm at *Calcutta* was assigned to trustees in *England*, in trust to call in and invest on *Indian* securities, and accumulate. The debtors became bankrupts in 1830, and the trustees not having, in the meantime, taken proper steps to call in the money, a considerable portion of the debt was lost. Held, that they were liable for the breach of trust, and ought to make good the accumulation which would have been produced; but that they were to be excused during such a reasonable time as was necessary in order to communicate between *England* and *India*. *Byrne* v. *Norcott.* vol. 13, p. 336

28. Pending a suit to make trustees liable for the improper investment of trust moneys on an *Irish* estate, the property was put up for sale under the Encumbered Estates Act, and an order was made giving the trustees liberty to buy, which they did. Held, that this order did not relieve the trustees from any liability in the cause, although it was not expressed to be made "without prejudice." *Norris* v. *Wright.* vol. 14, p. 291

29. Trustees are liable for not taking proper steps to get the trust fund transferred into their names. *M'Gachen* v. *Dew*; *Dew* v. *M'Gachen.* vol. 15, p. 84.

30. Trustees lent trust moneys on a second mortgage of house property greatly out

of repair, and the principal part was lost. Held, that they were liable as for a breach of trust, notwithstanding a trustee indemnity clause, declaring they should not be liable for the insufficiency or deficiency in value of any securities, except through their wilful default. *Drosier* v. *Brereton.* vol. 15, p. 221

31. In charging trustees for breaches of trust and the costs of suit, it is immaterial how the trust was created, and whether for valuable consideration, or by the voluntary gift of the trustees themselves. *Ibid.*

32. A married woman, *cestui que trust*, having separate property, who had *consented* to a breach of trust, was held not entitled to the *costs* of a suit against the trustee, and had to pay the costs of the the other defendants. *Mant* v. *Leith.* vol. 15, p. 524

33. In 1846 an executor invested part of the assets in exchequer bills; they were ordered into Court and sold in the same year at a loss. In 1848 it was declared by the decree, that the investment was improper, but at that time the price of exchequer bills had risen, so that there would have been no loss if they had been retained. Held, that the executor ought to be charged with the amount improperly invested, and credited with the produce of the exchequer bills in 1846. *Knott* v. *Cottee.* vol. 16, p. 77

See *Fletcher* v. *Green.* vol. 33, p. 426

34. Trustees who had improperly allowed perishable property to remain *in specie* and to be enjoyed by the tenant for life, being made liable, were allowed, by means of an inquiry, in the same suit, to recover back against the estate of the tenant for life the amount overpaid to him. *Hood* v. *Clapham.* vol. 19, p. 90

35. Where it is the duty of a trustee or executor to obtain payment of a sum of money, he is exonerated and never required to make good any loss, if he has done all he could to obtain payment but his efforts have not proved successful. Nay more, if he has taken no steps at all to obtain payment, but it appears, that if he had done so, they would have been, or there is reasonable ground for believing they would have been, ineffectual, he is exonerated from all liability. *Clack* v. *Holland.* vol. 19, p. 262

36. Trustees were empowered, with the consent of the wife, to lend the trust moneys to the husband. The wife authorized an immediate loan of part, and of the remainder at such times as the husband might require, and the husband covenanted to pay it in six months. The money was not called in, and was lost by the insolvency of the husband. Held, first, that the wife's consent could not be given prospectively; and secondly, that the trustees were not bound to call in the money at the end of six months. *Child* v. *Child.* vol. 20, p. 50

37. A Plaintiff sued his trustee, to make him responsible for a trust fund which had been wrongfully paid to the Plaintiff's father. The Plaintiff had, as one of the next of kin of the father, received two-thirds of his estate. Held, that the father's assets in the hands of the Plaintiff were primarily liable to make good two-thirds of the trust fund, in exoneration of the trustee, *Orrett* v. *Corser.* vol. 21, p. 52

See *Hope* v. *Liddell.* vol. 21, p. 183

38. A testator devised a real estate to *A. B.* for life, in terms which gave him the legal estate, and he bequeathed to him his personal estate, subject to some annuities bequeathed to the Plaintiffs, and appointed him an executor. *A. B.* wasted the assets. Held, that his life estate in the realty was not liable to make good the annuities. *Egbert* v. *Butler.* vol. 21, p. 560

39. *A. B.*, a married woman, who was absolutely entitled to stock in Court, being separately examined, desired it to be transferred into the names of trustees, "upon trust for her absolutely, and that the dividends should be held and applied for her separate use for her life." This was accordingly done. Held, that, during coverture, she could dispose of her life interest, held for her separate use, but not of her reversionary interest, and the trustee having, at her request, advanced the fund to her husband, whereby it was lost, was held liable to replace it, but her life interest was made answerable for the trustee's indemnity. *Hanchett* v. *Briscoe.* vol. 22, p. 496

40. A testator, who died in 1841, directed his trustees to sell his real estate, and giving them some discretion therein. Instead of selling, they mortgaged, and retained the estate. Held, that they had committed a breach of trust, and the estate having become depreciated, that they were liable for the loss. Held, also, that the mortgage was void as against the mortgagee with notice, but that he was entitled to stand as a creditor on the produce of the estate, to the extent to which the mortgage money had been properly applied. *Devaynes* v. *Robinson.* vol. 24, p. 86

41. Where a loss occasioned by a breach of trust does not happen until after the death of the trustee, his assets are equally liable. *Ibid.*

42. Under a will, a trustee held an aggregate fund in trust, as to one-third each for *A.*, *B.* and *C.* respectively for life, with remainder to their respective children. He, without any authority under the will, transferred one-third of the fund

to the trustees of the respective settlements of *A.*, *B.* and *C.* The share of *B.* having been dissipated by her trustees, held that *B.*'s children were entitled to participate in *A.*'s third, which was still remaining in her trustees' hands. *Browne* v. *Butter.* vol. 24, p. 159

43. The Plaintiff, a *feme covert*, was, from the death of her father in 1839, entitled to maintenance out of his estate, and to a share of the residue in 1854, when her youngest brother attained twenty-five. In 1843 the executors, in breach of trust, and without her previous knowledge, invested the residue in railway securities, and a considerable loss occurred. The Plaintiff soon after the investment heard of it, and complained of it in 1850, but took no proceedings until 1855, after the death of her uncle, an executor, from whom she had expectations, and whom she was unwilling to displease. Held, that she was *not bound by laches* or concurrence. *Davies* v. *Hodgson.* vol. 25, p. 177

44. A *cestui que trust*, having, with knowledge, received the income from an improper investment, was held bound to give credit for the difference between it and the income which would have arisen from a proper investment of the trust fund. *Griffiths* v. *Porter.* vol. 25, p. 236

45. The personal interests of a trustee in a trust fund in Court will be made applicable to the discharge of all claims against him as trustee. *Irby* v. *Irby.* (No. 3.) vol. 25, p. 632

46. A wife was entitled to an annuity for her separate use, which was payable out of a mortgage on her husband's estate. The wife lived with her husband and was maintained by him. The wife's trustee neglected to enforce payment of the mortgage and interest, and was held liable for the breach of trust. Held, that as between the husband and wife, the interest applied to their mutual benefit must be taken in discharge of her annuity, and that the trustee, as against the wife, was entitled to the benefit of the same equity. *Payne* v. *Little.* vol. 26, p. 1

47. The directors of a Building Society had (as it was held) power to invest unemployed moneys in the purchase of freeholds. Having only 621*l.* in hand, they contracted for the purchase of an estate for 2,300*l.*, payable by instalments. In the treaty, they held themselves out as a Land Society, and they paid 800*l.* on account, in cheques signed, by their order, by the trustees, who were not directors. Held, first, that the directors committed a breach of trust, and were liable to replace the 800*l.*; secondly, that the vendor was under no liability; and thirdly, that the *trustees, who had only acted ministerially*, under the directors, were not liable, notwithstanding there was some informality in the authority given to them by the directors. *Grimes* v. *Harrison.* vol. 26, p. 435

48. The testator, as lessee, was bound to insure. The *insurance* expired on the 25th of *March*, and the testator died on the 27th, without having paid the premium. The premium was not paid by the executors, and the house was burnt down on the 26th of *May*. Held, that the executors were not personally liable for not having kept up the insurance. *Fry* v. *Fry.* vol. 27, p. 146

49. When trust funds are, without authority, lent to traders, with notice of the trust, and employed in their business, such traders are not liable to account to the *cestuis que trusts* for a share of the profits of the business. *Stroud* v. *Gwyer.* vol. 28, p. 130

50. By a marriage settlement, the husband assigned a policy on his life to trustees, and covenanted to keep it up. The trustees neglected either to obtain possession of the policy or to give notice to the office, and the policy was mortgaged by the husband and afterwards sold and surrendered. The husband appearing to have been in insolvent circumstances and unable to keep up the policy, and the trustees having no available funds for the purpose. Held, that the trustees were not liable for the loss. *Hobday* v. *Peters.* (No. 3.) vol. 28, p. 603

51. Trustees made personally liable for a loss arising from placing trust moneys with bankers on a deposit account, which was not authorized by the will, and that, notwithstanding a trustee indemnity clause against losses by a banker of moneys deposited for safe custody. *Rehden* v. *Wesley.* vol. 29, p. 213

52. *A. B.* was the sole trustee of a sum of stock for *X.*, and he was joint trustee with *C. B.* of another sum of stock for *Y.* *A. B.* applied *X.*'s stock to his own use, and he replaced it by a transfer of *Y.*'s stock, which he persuaded *C. D.* to allow. *A. B.* informed *X.* of the investment, who put a *distringas* on the fund. Held, that the fund was held in trust for *X.* and not for *Y.* *Case* v. *James.* vol. 29, p. 512

53. A trustee has a primary charge (in priority of the general creditors) to be recouped out of the life estate of a deceased tenant for life, the amount of trust moneys wrongfully received by him and for the costs of suit. *Williams* v. *Allen.* (No. 2.) vol. 32, p. 650

54. Trustees lent trust money on mortgage, upon a valuation made on behalf of the mortgagor. The security proved greatly deficient. Held, that the trustees were personally liable for the loss. *Ingle* v. *Partridge.* (No. 2.) vol. 34, p. 411

55. Trustees, being authorized by their testator, embarked the assets in a partnership trade. In 1831 the active trustee became bankrupt, indebted (as was alleged) to the partnership, and through it to the testator's estate. In 1865 parties still under disability sought to charge a co-trustee with the loss occasioned by his not proving the alleged debt under the bankruptcy, but they did not prove the debt at the hearing. The Court considered that the right of proof could only be ascertained by taking the partnership account, and, having regard to the lapse of time, the deaths of parties and the trouble, expense and difficulty, declined to direct any inquiry on the subject, and dismissed the bill without costs. *Scott* v. *Izon*. vol. 34, p. 434

56. Where trustees are made liable for a breach of trust, the tenant for life having received the benefit, they are entitled to be recouped out of the interest of the tenant for life, although they have since ceased to be trustees. *Barratt* v. *Wyatt*. vol. 30, p. 442

57. A trustee employed a solicitor to invest trust money. The solicitor, who was steward of the manor, sent to the trustee some title-deeds and a copy of a surrender of copyholds to secure the trust money, but misapplying the trust money; the pretended surrender had really no existence. Held, that the trustee was liable to make good the loss. *Bostock* v. *Floyer*. vol. 35, p. 603

BUILDER.

In building contracts, this Court interferes in two cases; first, where there is collusion between the employer and the architect to injure the contractor, and secondly, where the accounts are too complicated to be taken at law. If neither of these exist, the remedy of the contractor is at law. *Bliss* v. *Smith*. vol. 34, p. 508

BUILDING ACT.

[*See* METROPOLITAN BUILDING ACT.]

BUILDING LEASE.

A building lease of charity property for more than ninety-nine years, cannot stand unless there be some special grounds on which it can be protected. *The Attorney-General* v. *Foord*. vol. 6, p. 288

BUILDING SOCIETY.

1. A benefit building society is not precluded from investing its funds in the purchase of a real estate. *Mullock* v. *Jenkins*. vol. 14, p. 628

2. A benefit building society took a mortgage from a member before its rules had been certified and deposited. These formalities having afterwards been complied with, it was held, that the deed was exempt from the stamp duty under the 6 & 7 *Will.* 4, c. 32, and 10 *Geo.* 4, c. 56, ss. 7, 37. *Williams* v. *Hayward*. vol. 22, p. 220

3. Distinction between a Benefit Building Society and a Freehold Land Society. *Grimes* v. *Harrison*. vol. 26, p. 435

4. A society whose rules are certified as a benefit building society, under the 6 & 7 *Will.* 4, c. 32, is not justified in acting as a freehold land society. *Ibid.*

5. A rule of a benefit building society directed that unemployed money should be invested "in such manner and upon such legal security" as the board of directors should deem necessary. Held, that it might be invested in the purchase of freeholds. *Ibid.*

6. The estimated probable duration of a benefit building society was thirteen years. Held, on the rules and terms of the mortgage deed, that an advanced member was entitled to redeem on payment of his subscriptions to the end of the thirteen years, although he was still liable, under the rules, to continue to pay subscriptions until 120*l.* a share had been realized for every member. *Sparrow* v. *Farmer*. vol. 26, p. 511

7. A bill by a retiring member of a benefit building society against the trustees, to recover the Plaintiff's share, was supported, and inquiries and accounts were directed. Held, also, that a rule to refer to arbitration did not oust the jurisdiction of this Court in such a case. *Smith* v. *Lloyd*. vol. 26, p. 507

8. Some property was mortgaged to a building society, and afterwards to *A*. The mortgagor borrowed money from *B*. to pay off the building society, which was done on the 4th of *September*, and a receipt was indorsed on the mortgage. Fourteen days afterwards, the mortgagor executed a new mortgage to *B*. Held, that the legal estate vested, under the 6 & 7 *Will.* 4, c. 32, in *A*. and not in *B*. *Prosser* v. *Rice*. vol. 28, p. 68

9. An advanced member of a building society held entitled to redeem his mortgage on payment merely of his fines and the subscriptions to the end of the thirteenth year (the estimated duration of the society), though he still remained liable for the subsequent subscriptions. *Handley* v. *Farmer*. vol. 29, p. 362.

10. The mortgaged property of an advanced member of a building society became saleable in consequence of his default.

The property was sold by the society to the Plaintiff, who took the forfeited shares, part of the purchase-money being payable by 20*l.* instalments. Held, that he was liable, under the rules, to fines for nonpayment of the instalments of the purchase-money. *Handley* v. *Farmer*. vol. 29, p. 362

BURIAL ACT.

1. As to the rights of the clergy to burial fees under the Burial Acts, 15 & 16 *Vict.* c. 85, and 16 & 17 *Vict.* c. 13. *Hornby* v. *The Burial Board for the Extra-Parochial Place of Toxteth Park*. vol. 31, p. 52
2. When a district, being part of a parish, has separate overseers of the poor and separately maintains them, such district is, for the purposes of the Burial Acts, to be regarded as a distinct parish. *Ibid.*
3. A burial ground attached to a district church, the right of interment in which was not confined to the inhabitants of the district, but could be purchased by any stranger. Held, not to entitle the incumbent to any part of the burial fees derived from a cemetery provided for the district under the Burial Acts. *Ibid.*
4. Under the Burial Acts, held, that neither the vicar of *Walton* nor the incumbents of the district churches of *Toxteth Park*, *Liverpool*, collectively or individually, were entitled to the burial fees in a cemetery provided in *Toxteth Park* under the Burial Acts. vol. 31, p. 52

BURIAL GROUND.

1. Persons had purchased family graves in perpetuity in a private burying-ground, which was afterwards closed by order of the Queen in council. There was no formal grant executed, but their title was merely evidenced by a receipt for the purchase-money, stating the purchase. Held, that they were entitled to an injunction to restrain the trustees from removing or injuring the graves or gravestones, &c. But held also, that the relief must be limited to the spot purchased by the Plaintiffs, and that the rights of the trustees to the remainder was unaffected. *Moreland* v. *Richardson*. vol. 22, p. 596
2. The mortgagee of a burial ground has notice of the purposes to which it is devoted, and is bound by rights of burial, temporary or in perpetuity, granted by his mortgagor, while left in possession. *Moreland* v. *Richardson*. vol. 24, p. 33
3. In 1831 a chapel and a burial ground adjoining were mortgaged. The mortgagors remained in possession, and afterwards, in 1833, graves were sold in perpetuity to different persons, without the concurrence of the mortgagees. The burial ground was closed by an order of the Queen in council, and the mortgagees thereupon began to level the ground and deface and destroy the tombstones, &c. The Court held, that the mortgagees were bound by the rights granted, and restrained them from doing any act which would prevent the future interment in the family graves, with the permission of the Secretary of State, and from removing or injuring the graves or the tombstones, and ordered the mortgagees to replace those which had been removed. *Ibid.*

BYE-LAWS.

[*See* RAILWAY.]

CAIRNS' ACT.

[*See* DAMAGES, QUESTIONS OF LAW OR FACT.]

CALLS.

[*See* COMPANY, SHAREHOLDER, ULTRA VIRES.]

1. Motion to restrain a company from declaring a forfeiture of shares, by reason of the nonpayment of calls alleged to be made for illegal purposes, refused, although it appeared that the directors had conducted the proceedings, in many particulars, in a very improper manner, it being sworn that money was wanted to satisfy existing legal obligations of the company, and it being denied that the company sought to enforce the calls for illegal purposes. *Logan* v. *Earl Courtown*. vol. 13, p. 22.
2. Specific legatees of shares in a banking company, held liable to pay the calls made subsequent to the testator's death. *Armstrong* v. *Burnet*. vol. 20, p. 424
3. After a charter had been sealed, and before the deed of settlement had been executed, provisional directors were allowed to make a call. *Norman* v. *Mitchell*. vol. 19, p. 278
4. Directors of a trading company incurred a large debt to the bankers beyond the subscribed capital. Held, that they were entitled to be repaid by the company by means of a call, with simple, but not compound, interest, or with rests, as charged by the bankers. *In re The Norwich Yarn Company. Ex parte Bignold.* vol. 22, p. 143
5. Payments to legatees is no answer to the claims of creditors, though no debt had arisen at the time of such payment. Thus, where the testator held shares in a banking company, and nine years after

his death the bank was wound up and a call made, it was held, that payments to legatees in the meantime could not be allowed to the executors as against the official manager in respect of the call. *The Official Managers of the Newcastle, &c. Banking Company* v. *Hymers.* vol. 22, p. 367

6. Where shares not fully paid up are specifically bequeathed, the question, whether the specific legatee or the residuary estate is liable to the future instalments, depends on whether the calls are actually made before the testator's death. *Addams* v. *Ferick.* vol. 26, p. 384

CANAL.

1. The public have a right to use steam power in navigating public canals, provided it occasions no more than the ordinary injury to it. *Case* v. *The Midland Railway Company.* vol. 27, p. 247
2. Experiments directed to be made by a civil engineer to ascertain the effect of steam navigation on a canal. *Ibid.*
3. Perpetual injunction granted to restrain a canal company from preventing the Plaintiffs using steam power on their canal; the Plaintiffs undertaking not to exceed a speed of three miles an hour. *Ibid.*

CANCELLING INSTRUMENTS.

[*See* DELIVERY UP OF INSTRUMENTS.]

CANONRY.

A canon of *Windsor* granted the canonry and the profits, &c. to the Plaintiffs to secure a sum of money. So far as it appeared on an interlocutory application, the estates were vested in the corporation, and the canon was entitled to an aliquot share of the profits. There was no cure of souls, and the only duties were residence within the castle, and attendance in the chapel twenty-one days a year. Held, upon this state of circumstances, that the security was valid, and a receiver of the profits was appointed.

Principles of public policy, on which pay, pensions, &c. are held unalienable. *Grenfell* v. *The Dean and Canons of Windsor.* vol. 2, p. 544

CAPITAL AND INCOME.

[*See* LIFE TENANT AND REMAINDERMAN.]

CASE FOR OPINION OF COURT.

[*See* QUESTION OF LAW OR FACT.]

1. By the Friendly Societies Act disputes are to be referred to the County Courts, which are to make such orders as the Court of Chancery may make, but in Scotch friendly societies the jurisdiction is given to the sheriff. Some members of a Scotch society having sought relief before the sheriff, the Defendants pleaded to the jurisdiction, whereupon the sheriff directed a case to the Court of Chancery, under the 22 & 23 *Vict.* c. 63, to ascertain whether that Court had jurisdiction in such a case in *England.* Held, that the case did not come within the statute, and this Court declined to express its opinion. *Re Brodie* v. *Johnson.* vol. 30, p. 129
2. The Court declined, upon a petition for its opinion under the 22 & 23 *Vict.* c. 35, s. 30, to decide whether an intestate's estate was liable upon a covenant to be implied in his marriage settlement. *Re Evans.* vol. 30, p. 232

CATCHING BARGAINS.

1. A reversion, expectant on the decease of a person aged fifty-six without issue, was sold for 20*l.* On a reference, the Master found that it was worth 350*l.* The sale was set aside, but the purchaser had his costs of suit, except those of the inquiry before the Master to ascertain the value. *Boothby* v. *Boothby.* vol. 15, p. 212
2. The purchase of a reversion could not stand in equity unless the purchaser shews that he paid the full value for it. *Salter* v. *Bradshaw.* *Bradshaw* v. *Salter.* vol. 26, p. 161
   St. Albyn v. *Harding.* vol. 27, p. 11
   Foster v. *Roberts.* vol. 29, p. 467
   Jones v. *Ricketts.* vol. 31, p. 130
   Nesbitt v. *Berridge.* vol. 32, p. 282
   Lord v. *Jeffkyns.* vol. 35, p. 7
3. The purchase of a reversionary interest supported, though the consideration given was less than the average of the estimated valuations of the witnesses, on the ground that the interest was subject to a chancery suit, which materially affected its value. *Perfect* v. *Lane.* vol. 30, 197
4. The general rule is this:—Where a person deals with an expectant heir for his reversion, the burden of proof lies upon such person to prove the fairness of the transaction. *Bromley* v. *Smith.* vol. 26, p. 644
   See *Addis* v. *Campbell.* vol. 4, p. 401
5. The application of the rule not prevented, (i) by the fact that the transaction was a charge and not a sale; nor (ii) that the expectant heir was a person

of mature age; nor (iii) that he perfectly understood the nature and extent of the transaction; nor (iv) was it necessary for the heir to shew that he was in pecuniary distress at the time. *Bromley* v. *Smith.* vol. 26, p. 644

6. A dealing by an expectant heir being set aside: Held, that he must bear the costs paid for the securities. *Bromley* v. *Smith.* vol. 26, p. 646

7. An expectant heir charged his reversion in 1853, and afterwards in 1855 to the same parties. The second transaction cancelled the first. The second being set aside by the Court: Held, that the first was not revived. *Bromley* v. *Smith.* vol. 26, p. 644

8. A reversionary sale and a grant of a reversionary lease stand on the same principles. *Grosvenor* v. *Sherratt.* vol. 28, p. 659

9. A mortgage of a reversionary interest, depending on a gentleman dying without issue male, set aside for inadequacy of consideration, although the risk was such as not to be susceptible of accurate valuation. *Benyon* v. *Finch.* vol. 35, p. 570

CHAMBERS.

[*See* ACCOUNTANT, CHIEF CLERK'S CERTIFICATE, INQUIRIES, PAYMENT (DEBTS AND LEGACIES), SUMMONS IN CHAMBERS.]

1. Cases stated, in which applications ought to be made to the Court in the first instance, and not to the Master. *Strickland* v. *Strickland.* vol. 4, p. 146
See *Edge* v. *Duke.* vol. 10, p. 184

2. Where, in an administration suit, it was referred to the Master to take an account of the debts, &c. and claims were made against the estate of such a nature that the Master could not conveniently dispose of them, held that, application must be made to the Court, which would either give special directions to the Master to proceed, or direct a suit, action, or such other proceeding as the exigency of the case required. *Lockhart* v. *Hardy.* vol. 5, p. 305

3. Where a party took his state of facts into the Master's office, and obtained leave to examine witnesses and completed the examination, his opponent's state of facts might, at any time before publication, be amended by leave of the Master. *Earl Nelson* v. *Lord Bridport.* vol. 6, p. 295

4. An inquiry being directed as to the propriety of taking proceedings to set aside a lease of charity property, *liberty* was given for the lessee, though not a party to the cause, *to attend.* *Attorney-General* v. *Pretyman.* vol. 8, p. 316

5. Powers of Master in rotation. *Attorney-General* v. *Haberdashers' Company.* vol. 7, p. 130

6. Powers of Vacation Master. *Lord Suffield* v. *Bond.* vol. 10, p. 146

7. After the Master had issued his warrant on preparing his report, an accounting party was, by consent, permitted to bring in his discharge and his evidence in support. During the proceeding, new evidence to charge was discovered by the Plaintiff; but the Master declined receiving it. Held, that the Plaintiff ought to be allowed to adduce it. *Shallcross* v. *Wright.* vol. 11, p. 433

8. Transfer from Master's office to chambers refused. *Saward* v. *M'Donell.* vol. 19, p. 228
Wedderburn v. *Wedderburn.* vol. 18, p. 465

9. On an adjourned summons from chambers, the Court did not make any declaration, but directed a certificate to the same effect to be drawn up by the Chief Clerk for its approval. *Morgan* v. *Hatchell.* vol. 19, p. 86

10. Costs caused by delay in chambers ordered to be paid by the solicitor. *Ridley* v. *Tiplady.* vol. 20, p. 44

11. If a party be dissatisfied with the accounts brought in and vouched in the Judge's chambers, he may examine the accounting party *vivâ voce*, but he should give notice of the points as to which he is to be examined. The accounting party may, in such case, be required to produce the documents at his examination, notwithstanding an existing order for production elsewhere. *Wormsly* v. *Sturt.* vol. 22, p. 398

12. Costs of an unsuccessful claim in chambers ordered to be paid by the claimant. *Yeomans* v. *Haynes.* vol. 24, p. 127

13. A party interested, being summoned to appear as a witness, is not justified in refusing to be sworn before the Chief Clerk, on the ground that he will not be able to have the assistance of counsel before the Chief Clerk, and that he ought, therefore, to be examined before the Judge or the Examiner. *In re the Electric Telegraph Company of Ireland.* (No. 2.) vol. 24, p. 137

14. The costs of counsel in chambers are always understood as being allowed, unless the contrary is expressed. *Greville* v. *Greville.* (No. 2.) vol. 27, p. 596

15. Residuary legatees, served with the decree and having liberty to attend, being very numerous, the Court declined allowing them more than one set of costs of attending the taking the accounts. *Re Taylor; Daubney* v. *Leake.* vol. 35, p. 311

CHAMPERTY.

1. A party prosecuting his claim to a fund

in Court, and to which he was ultimately found entitled, mortgaged it *pendente lite* to enable him to carry on his claim. Held, not void for champerty. *Cockell* v. *Taylor*. vol. 15, p. 103

2. Annuitants upon an estate, relating to which and to the incumbrances on which suits were pending in this Court, sold their interests, and the purchaser, with the annuitants, instituted this suit to enforce their claim. Held, that this transaction was free from champerty. *Knight* v. *Bowyer*. vol. 23, p. 609
3. A legatee too poor to sue, assigned the legacy for less than it was worth to the Plaintiff, who bought it for the purpose of enforcing payment by suit. Held, that this did not amount to champerty or maintenance. *Tyson* v. *Jackson*. vol. 30, p. 384
4. Distinction between selling a mere right to set aside a fraudulent conveyance, and selling the property itself after such a conveyance. In the first case the purchaser cannot sue to set aside the conveyance, but in the latter he can. *Dickinson* v. *Burrell*. vol. 35, p. 257
5. In 1860 *A. B.* sold and conveyed some property to *C. D.* Afterwards, in 1864, *A. B.*, by a deed reciting that the deed of 1860 was invalid, voluntarily conveyed the same property to trustees for himself for life, with remainder to his children: Held, that the infant children of *A. B.* could maintain a suit, as sole Plaintiffs, to set aside the deed of 1860; the right to sue being incidental to the property conveyed. *Ibid.*

CHARGE.

[*See* CHARGE OF DEBTS, CHARGING ORDER, EQUITABLE CHARGE, JUDGMENT, LIFE TENANT AND REMAINDERMAN, MERGER, PRIORITY.]

CHARGE OF DEBTS, &c.

[*See* EXONERATION, ORDER OF ASSETS, PAYMENT OF DEBTS AND LEGACIES.]

1. A testator directed his debts to be paid out of his real and personal estate; and he afterwards provided that if his personal estate should fall short in paying his debts, then he empowered his executors to enter into the receipt of the rents of his freeholds, until the same should be wholly paid off. The personal estate was sufficient for payment of the debts. Held, nevertheless, that a trust had been created for payment of the debts out of the realty, so as to prevent the operation of the Statute of Limitations, and that the real estate remained liable to pay a simple contract debt which had been left unpaid after distribution of the residuary personal estate. *Crallan* v. *Oulton*. vol. 3, p. 1
2. A testator devised a portion of his real estate to trustees for sale, and directed them to apply the proceeds and his personal estate in payment of the legacies and annuities *thereby* bequeathed; and in case the same should be insufficient, he charged all his real estate with the payment thereof. By several unattested codicils he gave further legacies and annuities, and subsequently he executed a duly attested codicil, whereby he varied the appointment of trustees and executors. Held, that the legacies and annuities bequeathed by the unattested codicils were not charged on the real estate. *Radburn* v. *Jervis*. vol. 3, p. 450
3. Additional pecuniary portions held on the context of the will to be primarily charged on the real estate. *Burrell* v. *Earl of Egremont*. vol. 7, p. 205
4. A testator gave legacies, and charged his executors, to whom he devised real and personal estate, with the payment thereof. Held, that the legacies were charged on the real estate. *Cross* v. *Kennington*. vol. 9, p. 150
5. A testator devised certain equitable real estates to his executors, as such, in trust for his wife and children, and bequeathed everything else to his wife; and he stated as follows: "My executors are charged with the payment of my just debts, of which I shall leave an account with the letter to my wife." Held, that the testator's debts were charged on these real estates; and, secondly, that the charge was general, and not limited to those enumerated in the account. *Dormay* v. *Borradaile*. vol. 10, p. 263
6. A testator, by his will, made a general devise of his real estates to his nephews, charged with his debts and legacies. By a codicil, he devised a freehold house to *A. B.*, it being his wish that she should reside therein if she should think fit. Held, that the house was exempt from the charge of debts and legacies. *Wheeler* v. *Claydon*. vol. 16, p. 169
7. Whether a mere charge of debts gives to the executor a power of sale by implication. *Robinson* v. *Lowater*. vol. 17, p. 592
8. A testator gave his real and personal estate to trustees, for the maintenance of his four children until they attained twenty-one. As they arrived at that age, respectively, he directed it to be divided as follows:—A legacy of 100*l.* to his son, and his property at *G.* (freehold), between his daughters. Held, on a deficiency of personal estate, that the legacy was not charged on the real estate. *Bentley* v. *Oldfield*. vol. 19, p. 225
9. A direction, to raise legacies out of the

"rents and profits" of a real estate, is a charge on the estate itself, and empowers the trustees to raise the money on it. *Lord Londesborough* v. *Somerville.* vol. 19, p. 295

10. A mere desire expressed by a testator in his will that his debts shall be paid, creates a charge on his real estate for their payment. *Wrigley* v. *Sykes.* vol. 21, 337

11. A general charge of debts on the real estate gives to the executors an implied power of sale. *Ibid.*

12. Distinction between the expression of a desire that all debts shall be paid, followed by a gift of a particular estate for the payment, and a general charge of the real estate with the debts, followed by a particular provision for their payment. In the former the general charge is qualified and limited to the particular estate, but in the latter it is not. *Ibid.*

13. A "testator" ordered his debts and legacies "to be paid and discharged out of his real and personal estate." He subsequently devised his real estates to trustees for five hundred years, and subject thereto, to his five sons as tenants in common in fee, "upon condition" that they should pay, in equal shares, certain legacies and his debts; and in case any son should neglect to pay his portion, the trustees of the term were, out of the rents of his share, to raise the amount. He appointed the five sons executors. Thirty-three years after the death of the testator the surviving executors sold the estate, as they alleged, to pay the debts. The Court held, that they had power to sell, and decreed a specific performance against the purchaser. *Ibid.*

14. When a testator devises his real estate to his executors and directs them to pay all his debts, that constitutes a charge on the real estate, although they take no beneficial interest in it. *Hartland* v. *Murrell.* vol. 27, p. 204

15. Where a testator gives a general direction that his debts shall be paid, this amounts to a charge of the debts generally upon the real estate, at least where the real estate is afterwards disposed of by the will. But an exception obtains, where the direction that the debts shall be paid is coupled with a direction that they must be paid by the executor. In that case it is assumed, that the testator meant that the debts should be paid only out of the property which by law passes to the executor. *Cook* v *Dawson.* vol. 29, p. 123

16. A testator devised his real estate to his executors in trust to sell, and he declared that, until the sale, it should "be considered as converted into personalty from the time of his decease," and that the produce should "be deemed part of his residuary personal estate." He bequeathed the residue of his personal estate to several persons. The personal estate proving insufficient to pay the pecuniary legacies. Held, that they were a charge on the produce of the real estate. *Field* v. *Peckett.* (No. 1.) vol. 29, p. 568

17. A testator devised his estate charged with the payment of a sum to trustees and with interest at 4*l.* per cent. The trustees were to pay the interest to persons for life, and after their deaths to pay the money charged to their children. Held, upon the construction of the will, that the owner of the estate had a right, in the life of the tenants for life, to pay off the charge. *Marsh* v *Keith.* vol. 29, p. 625

18. A testator gave his real and personal estate to trustees upon trust out of the rents and produce, or by a sale or other disposition thereof to raise an annuity for his wife and certain legacies, and to invest the surplus. He directed a sale of his real estate after the death of his wife, and gave his residue to his children. Held, that the personal estate was not primarily charged with the annuity, but that the real and personal estate formed one common fund for its payment. *Bedford* v. *Bedford.* vol. 35, p. 584

CHARGING ORDER.

1. Form of charging order in equity, under the 1 & 2 Vict. c. 110, s. 14. *Stanley* v. *Bond.* vol. 7, p. 386

2. As to the possibility of charging, under the 1 & 2 Vict. c. 110, a part only of a sum of stock standing in the name of a debtor. *Stanley* v. *Bond.* vol. 8, p. 50

3. Parties interested in a fund standing in the name of the Accountant-General in one suit, were ordered to pay the Defendants in another suit their costs. These being taxed, and a minute having been left with the senior Master of the Common Pleas, this Court, on petition, made a charging order on the fund for such costs, and granted an interim stop order. *Wells* v. *Gibbs.* vol. 22, p. 204

4. A judgment at law was given to be dealt with by this Court. A charging order cannot be obtained on such judgment without the leave of this Court. *Spence* v. *Briscoe.* vol. 26, p. 599

CHARITY.

[*See* BAPTISTS.
BENEFICE.
CHARITY (ADMINISTRATION).
CHARITY (BEQUEST).
CHARITY (JURISDICTION).
MORTMAIN.
SCHOOL.
VISITOR.]

CHARITY (ADMINISTRATION).

[*See* CHARITY (COSTS), CHARTER OF FOUNDATION.]

1. Trustees of charity lands may alienate them in proper cases. *Attorney-General* v. *South Sea Company.* vol. 4, p. 453

2. Absolute alienation and a reversionary lease of charity property set aside as improvident. *Attorney-General* v. *Kerr.* vol. 2, p. 420

3. By letters patent *E. A.* was empowered to found a charity, consisting of a master and a specified number of other members, who were thereby created a corporation, with power to take certain lands. *E. A.* was empowered to make ordinances for the government thereof, and for the better ordering of the estates. *E. A.* established the charity, and conveyed the lands to the use of the master and other members, of the numbers specified by the letters patent, and to no other intent and purpose whatsoever. He afterwards made ordinances, whereby, amongst other things, he added to the number of members specified by the letters patent, and appropriated to them a portion of the revenues of the charity property. Held, that *E. A.* had not the power of creating additional members, or of declaring any trust of the property in their favour. *Attorney-General* v. *Dulwich College.* vol. 4, p. 255

4. This Court has authority to exercise a discretion in charity cases; and where it appears that the prosecution of accounts and inquiries would not be beneficial but prejudicial to the interests of the charity, the Court will refuse them. The Court also discourages long and expensive litigation in charity cases for matters of small value. *The Attorney-General* v. *Shearman.* vol. 2, p. 104

5. Ten acres of charity land were alienated by the trustees in consideration of *55l.*, and a fixed rent-charge of *6l.* Held, that it was incumbent on those claiming the benefit of the alienation to shew that the transaction was beneficial for the charity, and not having done so it was held invalid. *Attorney-General* v. *Brettingham.* vol. 3, p. 91

6. The Court does not consider it the duty of the Attorney-General to contend for his strict rights in charity informations; in cases of hardship it sanctions his acting with forbearance towards the parties; and will postpone its decision, to give the parties an opportunity of entering into an arrangement with the Attorney-General. *Attorney-General* v. *Pretyman.* vol. 4, p. 462

7. *A. B.* entered into an arrangement with a body corporate for the endowment of a school, and conveyed real estates to them of a computed definite value. The corporation stipulated to maintain the charity for certain fixed sums, payable out of rents of a computed definite amount, by which they agreed to abide, and became bound to maintain it, though the rents should fall, and certain patronage was given to the corporation. There was a clause of forfeiture on their non-performance. Held, nevertheless, upon the context of the foundation deed, that although the corporation were bound to maintain the charity, even if the rents fell short, yet that the charity was entitled to the benefit of any increase in the rental. *Attorney-General* v. *Merchants Venturers' Society.* vol. 5, p. 338

8. A husbandry lease of charity lands for 200 years at a fixed rent, cannot, unless there be some special reason, be supported in equity.

Such a lease of charity lands cannot be supported upon any custom of the country in which the lands are situate. *The Attorney-General* v. *Pargeter.* vol. 6, p. 150

9. Lease of charity property for ninety-nine years at a fixed rent, containing no contract to repair or lay out any money thereon, set aside. *The Attorney-General* v. *Foord.* vol. 6, p. 288

10. A building lease of charity property for more than ninety-nine years may stand, if there are some special grounds on which it can be protected. *Attorney-General* v. *South Sea Company.* vol. 4, p. 453

11. A bequest was made to a corporation, in terms which devoted the whole improved income to a charity. In 1559 the corporation, by their answer in a suit, offered to apply the whole income to the charity. The decree directed the distribution of the whole existing income, and provided that in case of an increase the objects should receive an increase limited to 16*l.*, but it made no disposition of any surplus. Held, that under this decree the corporation was not, by implication, entitled to such surplus. *The Attorney-General* v. *The Drapers' Company.* vol. 6, p. 382

12. Reference, on the petition of the Attorney-General, made under the 2 Will. 4, c. 57, to appoint new trustees of a charity to settle a scheme, and to ascertain the property, and in whom the legal estate was vested. *In re the Fowey Charities.* vol. 4, p. 225

13. In charity informations the account is sometimes carried back to the date of the report of the charity commissioners, sometimes it is directed from the filing the information, and sometimes from the decree, according to the circumstances of each case. *The Attorney-General* v. *The Drapers' Company.* vol. 6, p. 382

14. A simple declaration that charity le-

gacies are to be paid out of pure personalty, will not give to such legacies a priority upon the pure personalty over other legacies and charges; nor exempt any part of the estate from the ordinary rules of applying and distributing the assets. *Sturgs* v. *Dimsdale.* vol. 6, p. 462

15. A testatrix created a mixed fund of realty and personalty for payment of her debts and legacies, but she directed the charity legacies to be paid out of pure personalty. She afterwards directed her trustees to set apart a sum of stock sufficient to provide for a number of annuities, and as the annuitants died the stock let loose was to be applied in payment of the charity legacies. *Semble*, that the direction alone was not of itself sufficient to exempt the charity legacies from being payable out of the realty, in the proportion of the realty to the personalty, but held, that the second part created a demonstrative fund of pure personalty, out of which the charity legacies were to be paid. *Ibid.*

16. A testator by his will founded a charity, towards which he directed certain and definite sums to be applied, and he devised estates to a company for that purpose. The will contained no express beneficial gift to the company. Held, however, under the circumstances, that the company was entitled to the increased rents of the property after making the fixed payments. *The Attorney-General* v. *The Grocers' Company.* vol. 6, p. 526

17. The Crown, in consideration of the past services of the town, the situation and importance of the place, the injury and damage to be expected from the king's enemies, from the current of water, and from the traffic on the bridges, and the ruin likely to take place if the means of repairing were not provided, granted certain tolls to the corporation of *Shrewsbury*, to be applied in reparation of the bridges and walls, without yielding any account or reckoning thereof. Held, that the grant was not made to the corporation for its own benefit only as a reward for prior services: that it was the duty of the corporation to apply so much of the receipts as might be required for the purposes stated:—that this was a gift for a public and general purpose for the benefit of the town, in aid of a general charge or burden to which the burgesses and inhabitants of the town were liable, and that it was a gift to charitable uses under the statute of *Elizabeth*, and was therefore subject to the jurisdiction of this Court. *The Attorney-General* v. *The Corporation of Shrewsbury.* vol. 6, p. 220

18. A testator devised property then in lease at a rent of 26*l.* to the principal of *Brasen-nose College*, the bailiff of *Birmingham* and the mayor of *Haverfordwest* for the time being, to hold to them and their successors for ever; the said yearly rent to be paid in manner following:—the sum of 8*l.* 13*s.* 4*d.* as an additional maintenance to the school at *Birmingham*, to be paid to the schoolmaster by the direction of the bailiff and his brethren; 8*l.* 13*s.* 4*d.* to *Brasen-nose College* for a scholar, and 8*l.* 13*s.* 4*d.* to the schoolmaster of *Haverfordwest.* And he directed that at the expiration of the lease, the land should be "sett forth and improved by the said principal, bailiff, and mayor for the time being, or their successors, either by fine or otherwise, so that the said rent of 26*l.* be for ever reserved and paid as before expressed, and the fine, if so sett, should be equally divided betwixt the said schools and college." Held, that the college took no beneficial interest in the increased rents or fines afterwards reserved. *The Attorney-General* v. *Gilbert.* vol. 10, p. 517

19. An old tenant from year to year of charity lands had, by an outlay of capital, &c., greatly enhanced its value. The old tenant and *A. B.* were both willing to take a lease at a rent exceeding the value; but the rent offered by *A. B.* was the largest. The Court held, that notwithstanding the fair claims of the old tenant, the benefit to the charity must be regarded; and that *A. B.*'s offer ought to be accepted, if the excess of the rent offered by him exceeded the amount of compensation to which the tenant was equitably entitled on being turned out. *The Attorney-General* v. *Gains.* vol. 11, p. 63

20. Reference, under the circumstances directed, to ascertain whether any and what compensation ought to be paid to an outgoing tenant from year to year, for his outlay of capital on charity lands. *Ibid.*

21. Lease of charity land for 999 years, subject to a fixed rent of 10*l.* and a covenant to lay out 300*l.* in building, set aside after 150 years, and an allowance for the building refused. *The Attorney-General* v. *Pilgrim.* vol. 12, p. 57

22. Ordinances made by *A.*, *B.*, and *C.* under a power contained in a royal charter for the management of charity property, followed by an act of parliament, confirming all ordinances made or to be made by *A.*, *B.*, and *C.*, held, under the circumstances, to be unauthorized and not confirmed, and the same, after a great lapse of time, set aside. *The Attorney-General* v. *Wyggeston Hospital.* vol. 12, p. 113

23. A charity was established in the reign of *Hen.* 8, for two chaplains and twelve poor. In 1572 Queen *Elizabeth*, by letters patent, ordained that the chaplains and poor "in omnibus et per omnia, se gerent, exhibebunt, comiserabuntur et

eligentuur, juxta ordinaciones, regulas et statuta, in hac parte," to be made by *A.*, *B.*, and *C.* In 1574 *A.*, *B.*, and *C.* accordingly made regulations, giving to the master the whole management of the charity property, and authorizing him to let on fines, and appropriate the fines to his own use. In 1576 an act of parliament confirmed the charter of 1572, and the ordinances made or to be made by *A.*, *B.*, and *C.* By letting on fines, the property, which was worth 7,000*l.* a year, produced, on an average, only 1,200*l.*, nearly half of which consisted of fines, and was received by the Master. The Court held, that this ordinance was not authorized by the charter or confirmed by the act of parliament, and that even if it were, still that this proceeding being shewn, in the lapse of time, to be prejudicial to the objects of the charity, the Court would direct a new mode of management to be adopted. *The Attorney-General* v. *Wyggeston Hospital.*
vol. 12, p. 113

24. A testator devised property producing 47*l.* a year to a corporation in "trust and confidence," to pay three sums of 20*l.*, 10*l.*, and 10*l.* to three charitable objects; and so long as certain taxes continued, what the corporation could not *spare* "out of the overplus of the rent," viz. 7*l.*, should be deducted out of the two sums of 10*l.* and 10*l.* The rental increased. Held, that the corporation took merely seven forty-sevenths of such increase, and that also subject to the payment of the ordinary repairs, &c., of the property. *The Attorney-General* v. *The Corporation of Beverley.* vol. 15, p. 540

25. Rules of law stated as to the rights of parties to the increased rents of charity estates. *Ibid.*

26. The sale of charity lands authorized, under Sir *Samuel Romilly's* Act, it being beneficial to the charity. *Re the Overseers of Ecclesall.* vol. 16, p. 297

27. In the case of a charity lease, the burden of proof of its fairness lies on the lessee. *Attorney-General* v. *Hall.*
vol. 16, p. 388

28. A lessee taking a lease of property belonging to a charity, but without notice of that fact, may protect himself as a purchaser for valuable consideration, *semble.* A lessee of charity property held to have constructive notice that it was trust property, the circumstances rendering it incumbent on her to inquire as to the lessor's title. *Ibid.*

29. Under the powers of an act of parliament, assented to by the Crown, as a lord of a manor, and by the commoners, King George III. granted to the vestry of *Richmond* a portion of the common, for a workhouse, a cemetery, and "in trust for the employment and support of the poor of the said parish." Held, upon the construction of the act and the grant, that, although this was a charity, the income might properly be applied in aid of the poor-rates and so in relief of the parish. *Attorney-General* v. *Blizard.*
vol. 21, p. 283

30. When lands are given to charity purposes on the happening of a particular event, there is a resulting trust in the meanwhile; but where real estate was vested in *A.* in trust, out of the rents, to keep it ready for the reception of plague patients, during their sickness, but no longer, and for a burying-place for them, and for no other use, &c.: it was held, first, that this was a good gift to charitable purposes, and not merely a gift contingent upon the reappearance of the plague; and, secondly, that there was no resulting trust in the meanwhile for the donor or his heirs, though the plague had not reappeared for more than 180 years. *Attorney-General* v. *Earl of Craven.*
vol. 21, p. 392

31. Devise to a corporation "upon condition" of making certain stated payments to a school and other charitable objects, and the "overplus," which the testator estimated at about 60*l.* a year, should go, half to the mayor and half towards repairing highways. Held, upon the context, that the increased rents were divisible amongst all the charitable objects in proportion. *The Attorney-General* v. *The Corporation of Southmolton.* vol. 14, p. 357

32. Where the origin of a charity or a right is lost in obscurity, the Court will presume, from the uniformity of the practice or use, that it is in accordance with the original foundation or right, and will presume whatever may be necessary to give it validity; but no such presumption can arise, from practice for a very long period, if an origin contrary to such practice is proved. *Attorney-General* v. *St. Cross Hospital.* vol. 17, p. 435

33. Usage is only presumptive evidence of the trusts of a charity. *Attorney-General* v. *Gould.* vol. 28, p. 485

34. Part of the property of a foundation school consisted of an advowson producing no income. The court considered, that, if the parish were within a reasonable distance and the duties of it light, the living might properly be held by the master or usher; but that not being the case, the advowson was ordered to be sold for the benefit of the charity, which the Court considered it had jurisdiction to order. *Attorney-General* v. *The Archbishop of York.* vol. 17, p. 495

35. The statutes of foundation of a school (1548) directed that the rents of the charity property should not be raised above the yearly rents then payable. Held, that this direction was simply in-

operative, and that the most must be made of the property. *Attorney-General* v. *The Archbishop of York.* vol. 17, p. 495

36. The provisions in the statute of foundation, as to the period of attendance of the master, may be modified by the Court in settling a scheme. *Ibid.*

37. In the absence of express directions, it is not incumbent on the schoolmaster to reside in the school-house, provided he live within a convenient distance, *semble*. *Ibid.*

38. Held, that an absolute alienation of a slip of charity-land fronting a street, near the metropolis, becoming important, could not be supported; and it was set aside as against a purchaser with notice, though made *bonâ fide*, for value, and without fraud or collusion. *Attorney-General* v. *Magdalen College.* vol. 18, p. 223

39. The minister and churchwardens of a parish had, for a long series of years, distributed the rents of some property among the poor of the parish; but it was not known in whom the property was vested. By act of parliament, the parish was divided into two, and the charities were to be distributed by the ministers and churchwardens respectively but no estate was vested in them by the act. In 1790 the ministers and churchwardens, and two principal inhabitants of each parish, conveyed the property in question, in consideration of a rent-charge which was adequate at the time. The purchasers had notice of the charity trust. Upon information, filed in 1852, against the purchasers, it was held, that the alienation was invalid, and that the Statute of Limitations was no bar, there being no person entitled to sue since 1790, within the meaning of the statute. *Ibid.*

40. A first principle applicable to charities is, that the intentions of the founder are to be carried into effect, as far as they are capable of being so, and so far as they are not contrary to law (using the word law in its proper and widest signification, as including the precepts of religion and morality). If, therefore, the founder has directed that only persons conforming to the Church of England shall be recipients of his bounty, his will must be followed. *Attorney-General* v. *Calvert.* vol. 23, p. 248

41. If a charity be founded to support some religious establishment, or if it seek to promote religious education (as in the case of Lady *Hewley's* Charity: *Shore* v. *Wilson*, 9 *Cl. & Fin.* 355), and if in addition to this, the intentions of the founder are not clearly expressed, or if the instrument of foundation be lost, or even never had any existence, the opinions and religious tenets of the founder have a most material bearing on this question, who are the objects of the charity, and in what manner the trusts of it are to be performed, for the purpose of carrying into effect the general purpose, which is known to be the support of religion. In these cases the presumption in the first instance is, that the founder intended to support an establishment belonging to some particular form of religion, and that he intended some particular doctrine of religion to be taught. The next presumption is, that the establishment and that this doctrine were those which he himself supported and professed, and the Court will look carefully at his course of life and conduct, and spell out expressions not merely in the instrument of foundation, but in his will and works, to ascertain what were the doctrines and opinions entertained and professed by him. *Attorney-General* v. *Calvert.* vol. 23, p. 248

42. To some extent, though in a far less degree, the same principle applies when a charity has been founded for purposes of secular education. Here, in the absence of expressed intention, the Court will not assume that the founder intended any particular religious doctrine to be combined with the secular education; but, on the contrary, will assume, that the object was for secular instruction generally, and that, admitting that religious education is to form part of the instructions given, it would still allow each person who needed the secular education to obtain the benefit of it, and would not, by enforcing particular rules relative to religious instructions, prevent all denominations of Christians from obtaining the benefit of the instructions so offered. But here again, if the founder has expressed an intention that religious instruction of a particular character shall form a part of the instruction given, the Court will follow that direction, although the effect may be to exclude a large portion of the community, most in need of the charity, from deriving any benefit from it. But when the charity is purely eleemosynary, a different class of considerations arises. *Ibid.*

43. Prior to the Reformation, almshouses were erected and endowed. The almspeople were required to attend the chapel and say *Paternosters*, *Aves*, &c., and pray for the souls of the dead; and if they did not obey the ordinances, were to be expelled. The parson of the parish and the churchwardens were to distribute the rents. Held, that dissenters who could conscientiously comply with the directions laid down by the founder, modified by the changes produced by the Reformation and the subsequent statutes, were not excluded from obtaining the benefit

of the charity; and that if a Dissenter conformed to the rules, the trustees could not examine whether he did so sincerely. *Attorney-General* v. *Calvert*.
vol. 23, p. 248

44. The fact of the recipients of a charity being required to rehearse a particular prayer in church, or sit in a particular pew, or attend at the church porch or in the church itself to receive the bounty, does not justify the exclusion of Dissenters from participating in the charity. *Ibid.*

45. In ecclesiastical charities, the religious opinions of the founder are of paramount importance; in educational charities, his religious opinions are only of value where some directions are given as to the religious instruction to be given; but in eleemosynary charities, the founder's religious opinions are wholly to be disregarded. *Ibid.*

46. An estate was devoted to the reparation of the parish church of *S. N.* Part of this parish was, under the 6 & 7 *Vict.* c. 67, formed into a new district, *St. M.* Held, that the church of *St. M.* was not entitled to an apportioned part of the income of the charity. *Attorney-General* v. *Love*.
vol. 23, 499

47. Property was devised to the town and commonalty of *Grantham*, for the discharge of the tax of the commonalty to the king for ever. The tax referred to was unknown, and the income had been applied to the use of poor freemen and their widows. Held, that this application was improper; that this was a charity property belonging to the town generally, and not to the corporation beneficially; and a scheme was directed. *Attorney-General* v. *Bushby*.
vol. 24, p. 299

48. Where property is given for charitable purposes which do not exhaust the whole income, one rule is, that this, *primâ facie*, is an indication of intention to benefit the donee. *The Attorney-General* v. *Trinity College, Cambridge*.
vol. 24, p. 383

49. In charity cases the contemporaneous acts of a donor are of importance for the purpose of putting a construction upon the instrument of gift, but the contemporaneous acts of the donee are only valuable as shewing the intention and view of the donee in accepting the gift. *Ibid.*

50. When property is given for charitable objects which do not exhaust the whole income, and the question is as to the right of the donee to the surplus, the case is varied where the donee is a charity, from that where the donee is a trading corporation. *Ibid.*

51. In 1558 a testator devised real estates, which he described as of "the clear yearly value of fourscore pounds or thereabouts," to *Trinity* College, *Cambridge*, "to their only proper use and behalf," to the intent following, "with part of the rents" to keep, find and maintain three grammar schools, and pay every master 13*l.* 6*s.* 8*d.*, and "with part of the rents keep, &c., a chaplain, and pay him 13*l.* 6*s.* 8*d.*," and he directed other charitable payments. At the testator's death the rents exceeded the specific payments by 1*l.* 6*s.* 8*d.* The rents having greatly increased, the Court, on a critical examination of the will, came to the conclusion, that after providing for the charitable objects, the college was entitled to the surplus rents. *The Attorney-General* v. *Trinity College, Cambridge*.
vol. 24, p. 383

52. Trustees had the option of establishing a charity in either of two ways, the one valid, and the other invalid. The fund was ordered to be paid to them without any undertaking as to the mode in which they would apply it, and without any declaration or direction of the Court on the subject. *The University of London* v. *Yarrow*.
vol. 24, p. 472

53. The Military Knights of *Windsor* held entitled to nothing beyond the fixed payment given them by the original foundation, and to have no interest in the increase of the surplus rents. *Attorney-General* v. *The Dean and Canons of Windsor*.
vol. 24, p. 679

54. Lands of the annual value of 661*l.* 6*s.* 8*d.* were conveyed to the Dean and Canons of *Windsor*, for the maintenance of specified charitable purposes, amounting to 430*l.*, including thence a fixed payment to the dean and canons, "and the residue, being (as the document stated) 231*l.* 6*s.* 8*d.*, to remain for the vicar's and serving priest's wages, and, when need requireth, reparation of the said lands, the officers' fees, and for the relief of the said dean and canons and their successors." The rental increased to about 14,000*l.* a year. Held, on the authority of the *Attorney-General* v. *Beverley*, that the dean and canons took beneficially the whole surplus rents, after paying the fixed charges. *Ibid.*

55. Lease of charity property in a town for 500 years, at a fixed rent of 6*l.*, set aside, though a large expenditure had been made in rebuilding and repairs on the faith of the lease. *Attorney-General* v. *Davey*.
vol. 19, p. 521

56. Held, that in such a case the Statute of Limitations (3 & 4 *Will.* 4, c. 27) was inapplicable. *Ibid.*

57. As to the period from which an account of rents is directed in setting aside a charity lease. *Ibid.*

58. An order was made in a suit, that the master of a charity should be at liberty to let a farm to the old tenant for twenty-

one years at a rent of 500*l.* a year. After the lease had been approved of, but before it had been executed by the master an offer was made of an increased rent of 220*l.*, but the tenant, in the meanwhile, had laid out a very large sum in artificial manures for the farm. The Court held, that the offer of so great an increase of rent could not be refused, but that the old tenant was entitled to an allowance for his outlay. *The Attorney-General* v. *Pretyman.* vol. 19, p. 538

59. Observations as to the jurisdiction and authority of the Court to alter or modify charitable trusts. *Attorney-General* v. *Boucherett.* vol. 25, p. 116

60. When the founder of a charity commits the administration of it to a man and his heirs, this Court cannot interfere with their discretion, so long as they perform their trust properly. *Ibid.*

61. Principles on which the Court proceeds in settling a scheme in charity cases. If the testator has clearly pointed out his intentions, the Court is bound to carry them into effect. But where the property is devoted to charity generally, or there are accretions of the charity funds not specifically disposed of, or where the particular charity wholly fails, the Court has a discretion. *Philpott* v. *St. George's Hospital.* vol. 27, p. 107

62. A charity was founded for almshouses for poor men and women "reduced by sickness, misfortune or infirmity." Held, that this did not authorize the Court, in settling a scheme, to sanction the building of an hospital or infirmary with accommodation for the almspeople. *Ibid.*

63. A testatrix made provision for six almsmen and for other charitable objects, and she gave the residue of the income to the six almswomen. The income having greatly increased, Held, that the almswomen were not entitled to the surplus income, as the effect would be to defeat the intention, by making them cease to be almswomen. Held, also, that the other objects were not entitled thereto, but that it was applicable to charity generally, and that the foundation of a school was a proper object to apply it to. *Re Ashton's Charity.* vol. 27, p. 115

64. A scheme, made in 1855, provided, that no person should act as trustee of the charity who should hold or occupy any part of the charity property. At that time one of the trustees held a small piece of charity land, under a twenty-one years' lease granted in 1847 by public tender. Held, that he must either give up the lease or the trusteeship. *Feord and Others* v. *Baker.* vol. 27, p. 193

65. The master of a charitable foundation was appointed by the presentation of a municipal corporation and institution by the bishop who was the visitor. No part of the charity property was vested in the corporation. Held, that the case was within the 71st section of the Municipal Corporation Act (5 & 6 *Will.* 4, c. 76), and trustees of such right were appointed under it. *Re The Huntingdon Municipal Charities.* vol. 27, p. 214

66. Trustees of a charity authorized to grant building leases for 600 years, such being the custom of the neighbourhood, and it appearing beneficial. *In re Cross's Charity.* vol 27, p. 592

67. A testator devised his estate for providing 108*l.* a year for scholars and exhibitioners of a college, and the remainder of the yearly rents for purchasing advowsons for them. By a codicil, he gave for a school and schoolmaster a house and land at *Bala*, and 15*l.* a year for the master, and 15*l.* to the scholars, and he gave the money necessary for keeping the school in repair; "there being 4*l.* 17*s.* of the present rents" of his estate in *Merionethshire*, above the 108*l.* to the scholars and exhibitioners at the college, and 15*l.* to the schoolmaster and 15*l.* to the scholars at *Bala*; but the house and land at *Bala* "being of the yearly rent of 3*l.* 12*s.*, being so much of the 4*l.* 17*s.*, the remainder thereof is 1*l.* 5*s.* per annum for the repairs." The rental having greatly increased, Held, that the school was entitled to such a proportion of the increase as 4*l.* 17*s.* bore to the whole original rents. *The Attorney-General* v. *Jesus College, Oxford.* vol. 29, p. 163

68. A trust "for printing, publishing and propagating the sacred writings" of *Joanna Southcote*, is a charitable trust, which if given out of pure personalty will be enforced and regulated. *Thornton* v. *Howe.* vol. 31, p. 14

69. In respect to charitable trusts for printing and circulating works of a religious tendency, this Court makes no distinction between one sect and another, unless their tenets include doctrines adverse to the foundation of all religion or subversive of all morality, in which case this Court will declare the bequest void. *Ibid.*

70. The Court having inferred, from reference to the parish church in the deed of endowment, that a school, founded in 1601, was a Church of *England* school, held, that the trustees and the schoolmaster also (if possible) ought to be members of that church, but that the instruction was open to scholars of every religious denomination. *Attorney-General* v. *Clifton.* vol. 32, p. 596

71. The Court, though holding a trustee to have been originally improperly appointed, declined to remove him. *Ibid.*

72. Residence within a parish being a necessary qualification of trustees on their

appointment, held, that their removal out of the parish after their appointment, to such a distance as to make it impossible to attend to their duties, would be a vacating of their office. *Attorney-General* v. *Clifton.* vol. 32, p. 596

73. A scheme directed for regulating the French Protestant Church in *London* and the charities connected therewith. *Attorney-General* v. *Daugars.* vol. 33, p. 621

74. In a suit for a scheme for a charity, the Court declined going into questions as to the validity of the appointment of existing officers of the charity, against whom there was no personal imputation, or to remove them. *Ibid.*

75. In a suit relating to the validity of the removal of a pastor, the trustees were ordered to pay the costs. They paid them out of the charity funds; but upon an information by the Attorney-General they were ordered to replace the amount. *Ibid.*

76. The Attorney-General altered the settlement of a scheme of a charity to protect the interests of all, and the Court refused to allow a member of a corporation, consisting of a master and thirteen brethren, to attend the settlement of a scheme of the charity, even at his own expense. *Attorney-General* v. *St. Cross Hospital.* vol. 18, p. 475

77. A grammar school, previously founded, was endowed in 1571, and the governors were in 1577 incorporated by Royal Charter, giving them powers to make rules and elect governors. Afterwards, various other charitable gifts were made to the governors connected with the school. Held, that, though improper conduct was even alleged against the governors, this was a proper case for a scheme for the purpose of putting the whole under one uniform system of management. *The Attorney-General* v. *The Governors of the Free Grammar School of Queen Elizabeth in Dedham.* vol. 23, p. 350

78. Held, in construing a legacy "*aux hospices de Paris et de Londres*," in the will of a person domiciled in *France*, and in regard to those in *London*, that the word "*hospice*" was to be construed strictly according to its meaning in *France*, and that the word "*hospice*" in French was not equivalent to "hospital" in English. *Wallace* v. *Attorney-General.* (No. 2.) vol. 35, p. 21

CHARITY (BEQUEST).

[*See* CHARITY (ADMINISTATION), MORTMAIN.]

1. Bequest to trustees to be divided between the testator's wife and six poor members of a chapel, share and share alike. Held, that the wife was entitled to one seventh absolutely, and that the other six sevenths formed a permanent charitable fund, the interest alone of which was from time to time payable to the poor. *Gregory* v. *The Attorney-General.* vol. 2, p. 366

2. A corporation holding in trust for a charity, held not entitled to *surplus rents*. *Attorney-General* v. *Merchants Venturers' Society.* vol. 5, p. 338
See *Attorney-General* v. *Corporation of Beverley.* vol. 15, p. 540

3. A charity was founded "for the relief of the poor of *S.*" Held, that the charity funds ought to be exclusively applied to the relief of parties not receiving parochial relief. *The Attorney-General* v. *Wilkinson.* vol. 1, p. 370

4. In every case where the general purpose of a gift or conveyance is declared to be charity, and the particular payments do not exhaust the whole fund, any surplus will belong to the charity, unless there are other circumstances from which a contrary intention of the testator can be collected. *Attorney-General* v. *The Drapers' Company.* vol. 2, p. 508

5. A testator bequeathed 1,000*l.* to "the Jews' poor, *Mile End*;" there were two charitable institutions for poor Jews at *Mile End*, and it not appearing which of the charities was meant, Held, that the fund ought to be applied *cy-près*: and the Court divided the bequest between these two charitable institutions. *Bennet* v. *Hayter.* vol. 2, p. 81

6. A testator in whom real estates were vested, subject to certain rent-charges, devised them to the Fishmongers' Company, "in aid of the maintenance of the poor men and women of the mystery and community aforesaid for ever;" being precisely the same terms as those under which, by their charter, the company were licensed to hold land in mortmain. Held, under the circumstances, that the testator was a mere trustee for the company; and an information being filed against the company, to carry into execution the charitable trusts mentioned in the testator's will, was dismissed with costs. *Attorney-General* v. *The Fishmongers' Company.* vol. 2, p. 588

7. Bequest of residue to a company, to apply the interest of a moiety "unto the redemption of *British* slaves in *Turkey* or *Barbary*," one fourth to charity schools in *London* and its suburbs, and in consideration of the care and pains of the company, the remaining one fourth towards necessitated decayed freemen of the company. There were no such *British* slaves to redeem; and a reference was made to the Master to approve of a scheme for the application of the fund

thus unapplied, having regard to all the charitable bequests in the will. Held, that the application of the fund to the education of the *British* emancipated apprenticed negroes was not a *cy-près* application; secondly, that the gift to the freemen of the company was a charitable bequest; and thirdly, there being no direct objects to which the income could be applied, regard being had to the bequest touching *British* captives, that the application of the fund to the second and third purposes was as near as could be to the intention of the testator, having regard to all the charitable bequests in the will.

8. Principles on which the Court proceeds in the application of a charity fund *cy-près*. *Attorney-General* v. *The Ironmongers' Company*. vol. 2, p. 313

9. Where a testator clearly delares an intention of devoting the whole income of a property to charitable purposes, then, although he does not, in specifically directing the application of portions of it, exhaust the whole income, still the general intention that the whole shall be applied to charitable purposes will prevail; and, on the other hand, although he does not make any such general declaration of devoting the whole to charity, but gives each and every portion of the whole income at the time to some charitable purpose, and by that means exhausts the whole, then, if the income should afterwards increase, the increase will also be applicable to the charitable purposes. *Attorney-General* v. *The Coopers' Company*. vol. 3, p. 29

10. A testator devised a house to the Coopers' Company, upon condition, and to the use, intent, and purposes of maintaining, augmenting, and supporting a school at *R.*, lately erected, and the same rent, which he represented to be 11*l.*, should be bestowed in manner following. He then gave different sums to different objects, amounting in the whole to 8*l.*, and amongst them 5*s.* to the Coopers' Company, and then gave 3*l.*, which he represented as that which remained ungiven, to the Coopers' Company, to put in their common box, towards the repair of the house when need be; and if the house should fall into decay by sudden misfortune, whereby no rent should be made, then the legacies to stay until it should be made tenantable, which he trusted the company would do within two years, and when tenantable, the company to go on with his will, "to avoid the penalty and danger which followeth." He then gave the house over beneficially to the Grocers' Company if the Coopers' did not bestow the 8*l.* as he willed them to do. The rents increased to 75*l.*

Held, that all the objects of the testator's bounty were entitled to participate in the increased rents, and that the Coopers' Company took the three elevenths beneficially, subject to the repairs. *Attorney-General* v. *The Coopers' Company*. vol. 3, p. 29

11. *A. B.* bequeathed to a company a sum to purchase lands of the clear value of 100*l.* a year, and gave 96*l.* to charity, and "the residue of the said sum of 100*l.* being 4*l.* yearly, to the company for their pains." Held, that all the objects were entitled rateably to the increased rents. *Attorney-General* v. *Drapers' Company*. vol. 4, p. 67

12. A testatrix, after reciting that the rent of a property was 10*l.*, devised it to *Christ's Hospital* (*a charitable foundation*), in trust as to 6*l.* for the poor of three parishes, and as to 4*l.* to *A. B.* for life, and after her death, in trust for the three parishes. Held, that *Christ's Hospital* took no interest in the increased rents. *Attorney-General* v. *Christ's Hospital*. vol. 4, p. 73

13. Charitable bequest to the *Rector* and corporation of *W. W.* being a vicarage, payment was ordered to be made to the Vicar and corporation. *Hopkinson* v. *Ellis*. vol. 5, p. 34

14. A gift to be divided "among poor pious persons male or female, old or infirm, as the executors see fit, not omitting large and sick families if of good character," is a valid charitable bequest; the word "poor" extending through the whole sentence. *Nash* v. *Morley*. vol. 5, p. 177

15. Bequest "to the poor on the testatrix's little estate in *Suffolk*." The testatrix in 1784 had an estate in *Suffolk*, but which was settled in that year, and the testatrix had merely a rent-charge issuing thereout. Held, that there was a valid charitable gift to the poor on the estate. *Bristow* v. *Bristow*. vol. 5, p. 289

16. Bequest of personalty to trustees, to be "applied for the relief of domestic distress, assisting indigent but deserving individuals, or encouraging undertakings of general utility." Held, void as a charitable bequest. *Kendall* v. *Granger*. vol. 5, p. 300

17. Bequest to the governors of a society instituted for the "increase and encouragement of good servants," &c. &c. No such institution could be found. Held, that the gift was charitable and did not fail. *Loscombe* v. *Wintringham*. vol. 13, p. 87

18. Charitable gift to the use of the reparation of the church of *U.*, and to the use of the reparation of the bridge of *U.*, and to the use of other things needful within the parish of *U.*, at the discre-

tion of the trustees, to be applied and distributed for ever. Held, that the discretion applied to the third branch only, and that the three objects took equally. *Re Hall's Charity.* vol. 14, p. 115

19. A gift to trustees to apply, in such manner as they in their uncontrolled discretion should think proper, "for the benefit, advancement, and propagation of education and learning, in every part of the world, as far as circumstances will permit, is a good charitable bequest. *Whicker* v *Hume.* vol. 14, p. 509

20. A testatrix, who had established a school at *Genoa*, by her will directed 1,000*l.* to be paid to *J. I.*, the consular chaplain there, for its support. *J. I.* being dead, the legacy was, after an inquiry, ordered to be carried to a separate account, and the dividends paid to the consular chaplain for the time being, he rendering periodically an account to the Judge at chambers, and to the Attorney-General, of its application. *Attorney-General* v. *Sturge.* vol. 19, p. 597

21. A bequest by a Jew, who died in 1821, of 10*l. per annum* to be paid to three persons to learn, in their Beth Hammadrass, or college, two hours daily, and on every anniversary of the testator's death to say the prayer called in Hebrew "Candish," and which is a short Hebrew prayer in the praise of God and expressive of resignation to His will, is valid. *In the Matter of Michel's Trust.* vol. 28, p. 39

22. A gift of a legacy to be divided "between twenty aged widows and spinsters of the parish of *P* ——" is a good charitable gift. *Thompson* v *Corby.* vol. 27, p. 649

23. A testator gave 4,000*l.* to his executors upon trust, with the concurrence of his sister, to settle it by deed on trust to provide stipends and annuities for indigent persons, not exceeding nine. The deed was also to regulate the management, &c. of the institution. He also devised nine freehold houses to his sister, suggesting to her, but without imposing any obligation, legal, equitable, or moral, that they might be converted into almshouses, for the recipients of the income of the legacy. By a codicil he revoked such parts of his will "as related to the building of certain almshouses" (there was none), and released his executors "from carrying out the same and the stipends and annuities connected therewith." Held, first, that the charitable gift was valid; and secondly, that it had been revoked by the codicil. *Baldwin* v. *Baldwin.* vol. 22, p. 413

24. Bequest to "the treasurer of the fund for the superannuated preachers and widows of Wesleyan ministers." There being no such fund, Held, that "The Itinerant Methodist Preachers' Annuitant Society" might take. *Bunting* v. *Marriott.* vol. 19, p. 163

25. Bequest for founding and upholding an institution, for investigating, studying and curing maladies of quadrupeds or birds useful to man, and for providing a superintendent or professor to give free lectures to the public. Held good, as a charitable legacy. *The University of London* v. *Yarrow.* vol 23, p. 159

26. Devise to two colleges equally, for the use and education of the descendants of my brothers, &c., "or in default of such, to their next poor kindred." Held, that this was a good charitable trust, but that, if no objects existed, the property was given beneficially to the two colleges. *Attorney-General* v. *Sidney Sussex College, Cambridge.* vol. 34, p. 654

CHARITY (COSTS).

1. The Defendant in a charity information, who had been ordered to pay the costs of the Attorney-General and of trustees, being insolvent and unable to pay, such costs were ordered to be paid out of the charity estate. *The Attorney-General* v. *Lewis.* vol. 8, p. 179

2. In raising costs out of charity property by a mortgage, the Court is anxious to provide for its extinction by a sinking fund. *Attorney-General* v. *Archbishop of York.* vol. 17, p. 495

3. One reference having been made to settle a scheme as to twenty charities, the costs were paid out of an existing available fund belonging to three of them. But it was ordered that they should be ultimately borne rateably by the twenty charities. *Re The Stafford Charities.* vol. 26, p. 567

CHARITY (JURISDICTION).

[*See* ATTORNEY-GENERAL, JURISDICTION.]

1. Costs of relator in charity informations allowed as between solicitor and client. *Attorney-General* v. *Kerr.* vol. 4, p. 297

2. The payment into Court under the Trustee Relief Act, prior to the Charitable Trusts Act, 1853, is not such "a suit or matter actually pending" as to relieve a party from the necessity of obtaining the assent of the commissioners under the latter act to a subsequent application. *In re Markwell's Legacy.* vol. 17, p. 618

3. A legacy given generally to an unendowed charitable institution, supported in part by voluntary contributions, is not within "The Charitable Trusts Act, 1853." *In re Wilson's Will.* vol. 19, p. 594

4. Where trustees have an option to apply funds to purposes which, though liberal or benevolent, are not such as are in this Court understood to be charitable, the trust cannot be executed here. Thus, the Court cannot execute a trust for private charity. A bill was filed by one of several trustees of a charitable gift, the validity of which was disputed, against the co-trustee, who had refused to act, and the next-of-kin of the testator, to have it executed. The trustees had accepted the trust. Held, that the proceeding was not improper, and that the Plaintiff was not bound to apply to the Attorney-General to proceed by information. *Nash* v. *Morley*. vol. 5, p. 177

5. A petition was presented under Sir *S. Romilly's* Act, imputing misconduct and seeking to displace the trustees and alter the management of a charity, in conformity with a decree, which turned out to have been reversed. At the hearing, a scheme and the appointment of additional trustees were alone asked. The title alleged being plainly erroneous, the Court, though of opinion that the two objects asked were proper, refused to direct them on this petition, but dismissed it with costs. *In re Peyton's Hospital*. vol. 8, p. 70

6. By an act of parliament passed in 1840, certain powers, &c. were given to the Ecclesiastical Commissioners and to the Queen in council, and it was enacted, that so much of a certain charity property "as should, upon due inquiry, be found legally applicable thereto, should, by the like authority, be applied for the purpose of making a better provision for the cure of souls in the parish of *W. M.*" The Court held, that the act did not invest the Commissioners with jurisdiction to determine what was legally applicable, which rested with the Court, and that the words "like authority" did not refer to the Commissioners; that if this Court ascertained what portion, according to the endowment, ought to be applied for spiritual purposes, even in a particular manner, the act did not authorize the Commissioners or the Queen in council to prepare or ratify a different scheme; that the Commissioners had not vested in them any such trust as could be performed or recognised by this Court; that they had no estate or interest in the matters in question, and no right to be treated as independent parties in the information, or to appear as such, and therefore that they could not sustain such a petition. *The Attorney-General* v. *Wimborne School*. vol. 10, p. 209

7. Under Sir *Samuel Romilly's* Act the Court has jurisdiction to declare the proportions in which charitable objects are entitled, but not to repair a previous misapplication of the funds amongst them. *Re Hall's Charity*. vol. 14, p. 115

8. The operation of the general words of the stat. 52 *Geo.* 3, c. 101 (Sir *Samuel Romilly's* Act), has been cut down by the decisions of the Courts to cases which arise between the trustees and *cestuis que trusts* of a charity, and even in such cases the Court must exercise a discretion as to whether the act can be applied with advantage to the charity. *In re Manchester New College*. vol. 16, p. 610

9. The administration of a charity by a Court of Equity ought not to be continued after a scheme, and final decree. *The Attorney-General* v. *Haberdashers' Company*. vol. 15, p. 397

10. Where the direction of the Court is required for the administration of a charitable trust, and there is no question between the trustees and strangers, and the objects of the charity have no separate and conflicting interests, the Court has jurisdiction by petition under the act, and ought to exercise it, though there is no appeal from the *Master of the Rolls* in such a case except to the House of Lords. *In re Manchester New College*. vol. 16, p. 610

11. The Attorney-General has a right to see that funds bequeathed by a British subject to a charity, whether British or foreign, are secured, but not to see to the administration of a foreign charity. *Attorney-General* v. *Sturge*. vol. 19, p. 597

12. Jurisdiction of this Court in charity matters:—This Court, in charity cases, has jurisdiction to redress a breach of trust, where the objects of the founder have been prevented or neglected. It has also authority to direct a scheme, in order to enforce the more complete attainment of those objects. The Court has also power, where the actual objects become impossible, to direct the application of the revenues *cy-près*; but it has no authority to vary the original foundation, and apply the revenues in a manner apparently more beneficial to the public, or as it may surmise the founder would have done, had he foreseen the changes which had taken place by the lapse of time. *Attorney-General* v. *Sherborne Grammar School*. vol. 18, p. 256

13. A bequest of 2,000*l.* to testator's executors, in trust to build a bridge in *Scotland*, over the river *Don*, "the situation to be chosen by them," was allowed by them to remain unapplied, and to accumulate for thirty years. The Court of Chancery refused to give directions to establish the charity in *Scotland*, but directed the money to be paid into Court, and that application should be made to the Court of Session in *Scotland* with re-

gard to the administration of the trust, with liberty afterwards to apply to this Court. *Forbes* v. *Forbes.* vol. 18, p. 552

14. The Court of Chancery has jurisdiction to alien the real estate of a charity, and it can do so upon an application under Sir *Samuel Romilly's* Act. *Re Ashton Charity.* vol. 22, p. 288

15. Part of a charity estate being taken by a public company, a petition to apply the purchase-money in redeeming the land tax, or other trusts, must be sanctioned by the Charity Commissioners' certificate, and must be intituled in the matter of the statute of 52 *Geo.* 3, c. 101, must have the *fiat of* the Attorney-General, and be signed by two individual petitioners and not by a corporation and an individual. *In re The London, Brighton, &c. Railway Company.* vol. 18, p. 608

16. In charity informations, where the case is doubtful, the Attorney-General should require a relator to be named to be answerable for the costs, even in cases certified by the Charity Commissioners. *Attorney-General* v. *Boucherett.* vol. 25, p. 116

17. The sanction of the Charity Commissioners is not necessary to enable a trustee of a charity fund to pay it into Court under the Trustee Relief Act, and when paid in, this Court may proceed to deal with it and direct a scheme, without the certificate of the Commissioners. *Re The St. Giles and St. George, Bloomsbury Volunteer Corps.* vol. 25, p. 313

CHARTER OF FOUNDATION.

1. The Court of Chancery will not, in a suit relating to the property of a corporation, determine on the validity of a Royal Charter of Incorporation. *The Attorney-General* v. *The Corporation of Aven otherwise Aberavon.* vol. 33, p. 67

2. Where the original charter of foundation of a charity does not exist, but copies of it are found in proper places, two of them purporting to be the original charter *in extenso*, and one omitting certain trusts found in the other two, the two set out *in extenso* must be acted on; though it appears the property of the charity was afterwards diminished, and it is alleged that in consequence thereof the visitor, under the authority given by the original charter, may have limited the trusts as shewn in the third copy. *Attorney-General* v. *Archbishop of York.* vol. 17, p. 495

CHARTER-PARTY.

[*See* SHIP.]

CHIEF CLERK'S CERTIFICATE.

[*See* CHAMBERS, INQUIRIES.]

1. Whether, by the 12th General Order (1828), the Master could extend the time for making his report more than once. *Davis* v. *Franklin.* vol. 2, p. 369
See *Beeke* v. *Whitworth.* vol. 3, p. 350

2. *A.*, having a lien on the testator's estate, established his debt under the decree; but his claim for interest was disallowed by the Master, whose *report stood confirmed.* The estate was sold, subject to *A.*'s lien, and *A.* having refused to accept from the purchaser his principal without interest, was not allowed to participate as a creditor in the purchase-money. *Hempstead* v. *Hempstead.* vol. 4, p. 423

3. Where the draft report was altered upon objections carried in after the warrant to sign, new objections might afterwards be carried in, and exceptions founded thereon were regular. *Richardson* v. *Horton.* vol. 5, p. 87

4. A party, having obtained and served the order *nisi* to confirm the Master's report, might afterwards file exceptions thereto; and the time within which this may be done, was unlimited until the order to confirm absolute was made: but it might be limited by an order *nisi* obtained by any other party on the neglect of the party having the carriage of the report. *Richardson* v. *Horton.* vol. 5, p. 87

5. A Plaintiff might obtain the order absolute to confirm a sale under the Court, though the order *nisi* was obtained by the purchaser: but the application was refused, on the ground of there having been great *laches* on the part of the plaintiff. *Lidbetter* v. *Smith.* vol. 5, p. 377

6. The Master's report of having computed subsequent interest, does not require confirmation. *Anon.* vol. 8, p. 314

7. The Master made a report not strictly following the order of reference, but, no objection or exception having been taken thereto, it had been confirmed. A party to the suit afterwards petitioned, on the ground of the informality, to discharge the orders *nisi* and absolute confirming the report, but it was dismissed. *Armstrong* v. *Storer.* vol. 9, p. 277
See *Gregory* v. *West.* vol. 2, p. 541

8. Old practice of confirming Master's report. *Beavan* v. *Gilbert.* vol. 8, p. 308
Ramsdale v. *Ramsdale.* vol. 10, p. 568

9. A party obtaining a Master's report adverse to himself was compelled to file it. *Re London Dock Company.* vol. 11, p. 78

10. A report, though absolutely confirmed,

was allowed to be varied as to that part which related to the maintenance of infants. *Ramsdale* v. *Ramsdale*.
vol. 11, p. 220

11. After a report was confirmed, the Master had no jurisdiction to correct clerical errors. *Richardson* v. *Ward*.
vol. 13, p. 110

12. Error in a Master's report, which had been continued in the decree, whereby sums in *Irish* currency had been treated as *English* money, corrected upon petition. *Ellis* v. *Maxwell*. vol. 13, p. 287

13. When objections to the Chief Clerk's certificate are heard and disposed of by the Judge himself in chambers, they will not be reheard by the same Judge in open court, but the party must proceed to the Court of Appeal. *The York and North Midland Railway Company* v. *Hudson*.
vol. 18, p. 70

14. A certificate having found property bequeathed in mortmain to be pure personalty: Held, that it was too late, in the absence of a motion to vary the certificate, to raise the objection. *Aspinall* v. *Bourne*. vol. 29, p. 462

CHILDREN.

[*See* DESCRIPTION OF LEGATEE, ELDEST CHILD, GIFT TO A CLASS, "ISSUE," POWER (EXECUTION), REFERENCE (GIFT BY), VESTING, YOUNGER CHILDREN.]

1. Bequest of a pecuniary legacy to *A.* for life, with remainder to *B.* for life, with remainder to the children of *A.* living at the decease of the survivor of *A.* and *B.*, to be paid at twenty-one, with benefit of survivorship in case of the death of any such children under twenty-one, with a gift over to *X.* if all such children died under twenty-one. *A.* had two children only, who attained twenty-one and died in *A.*'s lifetime, leaving children: Held, that the gift over to *X.* took effect. *Wilson* v. *Mount*. vol. 2, p. 397

2. Bequest of 500*l.* each to the four children of his niece, *A. B*, *nominatim*, followed by a like gift to each of the children "that *may* be born" to any nephew or niece. Held not to include a fifth child of *A. B.*, born at the date of, but not named, in the will. Held, also, on the same will, by Sir *John Leach*, that a child born after the testator's death was not entitled, and by Sir *J. L. Knight Bruce*, that the four children did not take cumulative legacies. *Early* v. *Middleton*.
vol. 14, p. 453

3. A testator, by his fourth codicil, made gifts to *M.*, his wife, and *E.*, their child, and also to a boy, *F.*, and in this codicil he spoke of *E.* and *F.* as "the children," and appointed his wife their guardian. By the fifth codicil, he bequeathed 400*l.* to *M.* "for her own and the children's benefit." The marriage of the testator with *M.* turned out to be invalid. Held, that by the term "children" in the fifth codicil, *E.* and *F.* were meant. *Hartley* v. *Tribber*. vol. 16, p. 510

4. Devise and bequest to all the testator's children living at his decease (without naming them). A subsequent codicil confirmed the gift, as mentioned in his will, "to his surviving children" (naming them all). One died in the testator's lifetime, leaving children who survived the testator. Held, that the survivorship had relation to the testator's death, and not to the date of the will, and that the representatives of the deceased child took nothing under the 1 *Vict.* c. 26, s. 33. *Fulford* v. *Fulford*. vol. 16, p. 565

5. A bequest in favour of the testator's two children, then born (by name), and the child "of which his wife was then *enceinte*,"—Held, on the context, to include, besides the above three, a fourth child, born three years after the date of the will. *Goodfellow* v. *Goodfellow*.
vol. 18, p. 356

6. A testator, in 1831, devised his copyhold messuages to trustees, upon trust to permit his wife to occupy one of them during the minority of his youngest child, and to apply the rents of the others to the maintenance, &c. of his children, *Thomas* and *John*, "and the children or child of which his wife was then *enceinte*," during minority, making thereout a provision for his wife. The testator then provided for the advancement of his "said children," the division of the messuages among them at twenty-one, and for benefit of survivorship among them. He also bequeathed his personal estate on the like trusts in favour of his "said children," and in all these cases he added the words "as well the children or child of which my wife is so *enceinte* as those already born;" but in several instances he simply used the words "said children," and in one instance omitted "said." In 1847 the testator made a codicil, disposing of freeholds and copyholds acquired since the date of the will, on the same trusts and confirming the will. The child of which the wife was *enceinte* was afterwards born, and subsequently, in 1835, a fourth child was born. Held, first, that the fourth child was entitled to a share; and secondly, that the widow was put to her election. *Goodfellow* v. *Goodfellow*. vol. 18, p. 356

7. A testator gave a fund to his wife for life, with a power to her to appoint it by will amongst "*A.*, *B.*, and *C.*, and their respective children," and in default of appointment, he directed "the same at

his wife's death to go amongst all the said children equally." The wife made no appointment. Held, first, that the children alone took to the exclusion of their parents; secondly, that they took *per capita;* and thirdly, that the fund vested in the children living at the death of the testator, subject to its being either divested by the exercise of the power, or by the birth of other children before the death of the tenant for life. *Pattison* v. *Pattison.* vol. 19, p. 638

8. Where the words "children" and "issue" are used interchangeably in a will, the operation of the word "children" may be extended to "issue," to effectuate the intention. *Harley* v. *Mitford.* vol. 21, p. 280

9. Where a testator gave a fund to his sister (then married to a second husband) for life, and after her decease to her children by her then present or any future husband, it was held that *children by her former marriage* were not excluded. *Pasmore* v. *Huggins.* vol. 21, p. 103
See *Stopford* v. *Chaworth.* vol. 8, p. 331

10. A testator bequeathed leaseholds equally to his four grandchildren, and after their decease, to "such lawful issue" as they or any or either of them should leave. Held, that on the death of each grandchild, his issue of every degree then living became equally entitled to his one-fourth, and that issue was not to be read "children," though in a subsequent gift he had used that expression. *Waldron* v. *Boulter.* vol. 22, p. 284

11. Under a similar devise of renewable leaseholds and copyholds to the four grandchildren equally, and after their death, "for such children as they or any or either of them should leave her or him surviving." Held, that on the death of each grandchild, his "children" then surviving took as tenants in common. *Ibid*

12. Bequest to the children of *A.* equally. *A.* and all his children were dead at the date of the will, but there were grandchildren and great-grandchildren of *A.* living. Held, that the grandchildren living at the death of the testatrix, excluding the great grandchildren, were entitled. *Fenn* v. *Death.* vol. 23, p. 73

13. The word "issue" restricted to "children" by force of the correlative expression "parent." *Maynard* v. *Wright.* vol. 26, p. 285

14. Gift, after a previous life estate to *C.*, to the children of *W.* who should be living at the death of the testator and *C.* Held, that a child of *W.*, who was born after the death of the testator and survived *C.*, was included in the class, and took a share. *Fox* v. *Garrett.* (No. 2.) vol. 28, p. 19

15. The word "son," in connexion with the words "heir" and "issue," held, by force of context, to mean issue male. *Jenkins* v. *Lord Clinton.* vol. 26, p. 108

16. The primary meaning of the word "family" is "children," and there must be some circumstance, either in the will or in the situation of the parties, to prevent that construction. *In re Terry's Will.* vol. 19, p. 580

CHOSE IN ACTION.

[*See* EQUITABLE ASSIGNMENT, NOTICE, WIFE'S REVERSIONARY INTEREST.]

CHURCH.

[*See* ADVOWSON (BENEFICE), CHARITY (ADMINISTRATION), MORTMAIN.]

Special directions were asked to be given to the Master as to taking the provisions of the Church Building Acts into consideration in settling the scheme, the parish being divided into eight separate districts, and the money being to be distributed by the rector and churchwardens; and it was also asked, that directions should be given as to the mode of distribution in each district of the portion allotted to it. The former was refused, and it was held, that the Master could take the latter into consideration without any special direction. *Attorney-General* v. *Dalton.* vol. 13, p. 141

CLAIM.

1. Leave given to executors and devisees in trust to file a claim to have the will established, and the trusts performed, and the administration of the estate. *Rickford* v. *Young.* vol. 12, p. 537

2. Practice as to setting down claims for hearing. *M'Cullock* v. *Haggar.* vol. 12, p. 546

3. Leave given to amend a claim. *Early* v. *Whitling.* vol. 12, p. 549

4. Practice where claim was filed after bill exhibited for the same purpose, and decree was afterwards made in the suit before the claim was heard. *Dicker* v. *Hugo.* vol. 12, p. 550

5. Leave given to serve a writ of summons in *America.* *Thomas* v. *Colsworth.* vol. 14, p. 208

6. Where a plaintiff did not appear on a claim, it was dismissed without any affidavit. *Bell* v. *Hornby.* vol. 14, p. 439

7. An equitable mortgagee filed a claim against the assignee of the mortgagor alone, asking for a sale, and either that the other mortgagees (of which there

were several) might be summoned before the master, or that a decree might be made to ascertain what mortgages there were and their priorities. The Court refused the order. *Burgess* v. *Sturges.* vol. 14, p. 440

8. If one simple issue on one single point was involved, the Court, though the evidence might be voluminous, would entertain the case by claim, but where the issues and facts were numerous, the Court required a bill to be filed. *Jacobs* v. *Richards*; *Jacobs* v. *Porter.* vol. 18, p. 300

9. At the hearing of a claim, the Plaintiff was ordered to bring the representatives of a deceased person before the Court. Not having done so, the Defendant, after considerable delay, moved to dismiss. Held, that the proper order was, that the Plaintiff should comply within a fortnight, or, in default, that the claim should be dismissed. *Pearce* v. *Wrighton.* vol. 24, p. 253

CLASS,

[*See* GIFT TO A CLASS].

CLERK IN COURT.

Acting for Plaintiff and Defendant. See *Beasen* v. *Waterhouse.* vol. 21, p. 68

CO-DEFENDANTS.

1. Accounts between co-Defendants are directed in those instances only in which a case is made out between them on the pleadings, and is supported by evidence.

Where a cause had been set down on bill and answer, accounts between co-Defendants were refused. *Eccleston* v. *Lord Skelmersdale.* vol. 1, p. 300

2. A decree was made against *A. B.*, setting aside, as fraudulent, a purchase by an agent from his principal; and a reconveyance, and the usual accounts of rents and purchase-money were directed, in which an allowance was to be made for substantial repairs and lasting improvements. *A. B.* sold and conveyed part of the property, *pendente lite*, and died before the accounts were completed; a supplemental bill was filed against the purchasers and the heir and personal representatives of *A. B.*; the bill charged that the purchasers, in case of eviction, claimed compensation out of the estate of *A. B.*; the conveyances, *pendente lite*, being set aside. Held, that the purchasers were entitled in this suit, as against their co-Defendants, the personal representatives of *A. B.*, to an order for the repayment of their purchase-money, and were entitled, as against the Plaintiff, to an allowance for substantial repairs and lasting improvements, but that no greater relief could be given them in this suit.

Held also, that the heir and personal representatives were proper parties to the supplemental bill. *Trevelyan* v. *White.* vol. 1, p. 588

3. A suit was instituted, by a party entitled in remainder, against a trustee, to make him responsible for a trust fund invested on an improper security, and a decree was made for its restitution. Held, that in this suit the tenant for life, who was a Defendant, was not entitled against his co-Defendant, the trustee, to an account of the interest which had accrued pending the suit, there being no such case made by the pleadings. *Goodwin* v. *Clewley.* vol. 2, p. 30

4. An allegation in the bill was admitted by one defendant, *A.*, and denied by another, *B.*, and the Plaintiff who had not proved it proposed to waive his claim in respect of it, but this being opposed by *A.*, an inquiry was directed as to the fact. *Crow* v. *Carleton.* vol. 5, p. 521

5. Two Defendants, *A.* and *B.*, answered separately. *A.* admitted the possession of certain documents, but alleging that he had acted as solicitor of *B.*, claimed privilege. *B.*, by his answer, denied that *A.* was his solicitor. On a motion for production, Held, that *B.*'s answer could not be read in aid of the motion against *A.*'s answer. *Blenkinsopp* v. *Blenkinsopp.* vol. 11, p. 134

6. When a Plaintiff's case wholly fails, it cannot be aided by the gift or waiver of one Defendant, as against his co-Defendant. *Hollingsworth* v. *Shakeshaft.* vol. 14, p. 492

7. Declaration of rights, as between co-Defendants, refused. *Thomas* v. *Lloyd.* vol. 25, p. 620

CODICIL.

1. The confirmation of a will by a codicil does not revive a legacy adeemed in the interval between the will and codicil. *Montague* v. *Montague.* vol. 15, p. 565

2. In the construction of a gift in a codicil, the Court may and must look at the previous will and codicils. *Hartley* v. *Tribber.* vol. 16, p. 510

3. A testator gave the income of his property to *F.* and two other persons successively for life, and on the death of the survivor he gave all his property to the eldest son then living of *W.*, his executors, administrators and assigns. *W.* had three sons, of whom *W. W.* was the

eldest. The testator by a codicil revoked so much of his will as related to *W. W.*, "and left *F.*, on the death of the tenants for life, in the full enjoyment of all his property." Held, that the gift to *F.* in the codicil enlarged his life estate into absolute ownership, and being inconsistent with the gift to the eldest son of *W.*, revoked it, whether the revocation of the gift to *W. W.* operated as a revocation of the gift to the "eldest son of *W.*" or not. *Wells* v. *Wells*. vol. 17, p. 490

4. A married woman, by her will, appointed and devised certain property and all other "hereditaments (if any) which she had any power to appoint or devise." Afterwards, when a widow, she by codicil confirmed the will. Held, that the will, as confirmed, only passed such hereditaments as were subject to her power. *De Hourmelin* v. *Sheldon*. vol. 19, p. 389

5. A testator made a will and codicil, the former was attested so as to pass real estate, but the latter was not. By his will he bequeathed a legacy of 3,000*l.*, and charged it on his real "in aid of his personal estate." And he devised his real and personal estate to trustees, charged with his legacies, upon trust thereout, by mortgage, sale or other disposition, to pay the legacy of 3,000*l.* By the codicil he reduced the legacy from 3,000*l.* to 2,000*l.* Held, that the codicil, though not properly attested, effected the reduction. *Coverdale* v. *Lewis*. vol. 30, p. 409

See *Radburn* v. *Jervis*. vol. 3, p. 450

CO-EXECUTOR'S LIABILITY.

[*See* Co-Trustee's Liability.]

COLLATERAL SECURITY.

The Defendant borrowed money of the Plaintiff, and he gave his promissory note for the amount with interest at 60*l.* per cent. together with an equitable charge on copyholds as a collateral security for the note. The Plaintiff sued at law on the note, and, by mistake, he claimed and recovered interest at 5*l.* instead of 60*l.* per cent., which was paid. Held, that the Plaintiff could not afterwards sue in this Court upon the mortgage to recover the deficiency, and his bill for that purpose was dismissed with costs. *Darlow* v. *Cooper*. vol. 34, p. 281

COMMISSION TO TAKE EVIDENCE.

1. New commission granted for misconduct of commissioners. *Sayer* v. *Wagstaff*. vol. 5, p. 462

Chameau v. *Riley*. vol. 6, p. 419

2. Commission to take answer abroad must be obtained on motion. *De Feuchères* v. *Dawes*. vol. 5. p. 144

3. Mode of applying for certificate of necessity for a commission. *Earl Nelson* v. *Bridport*. vol. 7, p. 195

4. Upon an application to the court to examine witnesses out of the jurisdiction, it is not a general rule to require the names of the witnesses to be stated, or the affidavit to be made by the party or his solicitor. *M'Hardy* v. *Hitchcock*. vol. 11, p. 93

5. The return of a commission from *Jamaica*, which omitted to state that the commissioners and their clerks had taken the oaths, ordered to be amended, and to be received in evidence, though, in addition, the signature of the commissioners had not been affixed to the interrogatories. *Davis* v. *Barrett*. vol. 14, p. 25

COMMITTAL FOR CONTEMPT.

[*See* Contempt (Procedure).]

COMPANY.

[*See* Borrowing Powers, Call, Contributory, Cost Book, Directors, Lands Clauses Act, Railway, Shares, Shareholders, Ultra Vires, Winding-up.]

1. Four projectors of a public company obtained a charter, by which they and all persons who might become subscribers were incorporated. The capital was declared to be 20,000*l.*, which was to be divided into 400 shares. Before any other subscribers had joined, the four projectors, of common assent, divided the 400 shares amongst themselves, accounting to the corporation (as was alleged) for 12,000*l.* and not 20,000*l.* They afterwards disposed of the shares. A bill being subsequently filed by the corporation against the projectors, impeaching the transaction, and to compel them to pay the full consideration. Held, that though at the time they were the only persons interested in the company, yet it was not competent for them to take the shares without paying the full consideration. *Society of Practical Knowledge* v. *Abbott*. vol. 2, p. 559

2. On a bill by an incorporated company against the four projectors of it, to compel them to account to the company for the value of shares which they had appropriated to themselves, without, as was alleged, having paid the full consideration: Held, that the individual shareholders need not be made parties. *Ibid.*

3. Distinction between a corporation and the aggregate of the members forming such corporation. *Ibid.*

4. Provisional directors of a company held, under the circumstances, empowered to make a call, in the interval between the grant of a charter and the execution of the deed of settlement as required thereby, and under which a board of directors was to be elected. *Norman* v. *Mitchell*. vol. 19, p. 278

5. Some of the clauses in a public company's deed of settlement are directory and some imperative. A deviation in the former may be sanctioned and confirmed by a general meeting of the shareholders, but the latter cannot unless with the assent of every individual shareholder. *In re The Norwich Yarn Company, Ex parte Bignold.* vol. 22, p. 143

6. By the deed of settlement of a joint-stock company, all cheques on the bankers were to be signed by three directors. Held, that this was directory and not imperative, and therefore, that the directors were entitled to be allowed any sums drawn from the bankers by cheques not properly signed, if *bonâ fide* applied for the purposes of the trade. *Ibid.*

7. Absent members of a company held affected by the information furnished by the directors at a general meeting, and bound by the proceedings as to matters within its competence. *Ex parte Bignold.* vol. 22, p. 165

8. A joint-stock company established without act or charter in 1835, and prior to the Joint-Stock Companies Registration Act (7 & 8 *Vict.* c. 110), does not, upon an alteration in the shareholders subsequent to that act, require registration. *Re The Mexican and South American Company.* vol. 27, p. 474

9. The managing committee of a projected railway company are, as well as the directors after its formation, not the mere agents of the shareholders, but their trustees, and liable to account as such. *Williams* v. *Page.* vol. 24, p. 654

10. When the managing committee of an abortive company have rendered their accounts, and divided the money in their hands, without consent or remonstrance on the part of the shareholders, the Court would not, three or four years afterwards, decree an account against them. *Ibid.*

11. Provisional directors professed to the shareholders that they had themselves taken 3,800 additional shares, and paid the deposit, in order to provide the deposit required by the standing orders. The money was advanced by eleven of the provisional committeemen and three others. The project failed, and the money was returned in full to the persons who had advanced it. Held, that this was a fraud on the company, and that the money must be restored; but held also, that the relief could not be had in the absence of the three. *Ibid.*

12. The directors of a company having no borrowing powers, being pressed for money by their contractor, obtained for him on credit 2,000*l.* at a bankers', upon their guarantee. The contractor afterwards agreed to abandon the plant, &c. to the company, on receiving 600*l.* and being indemnified against the bankers' claim. Subsequently to this, the secretary of the company, with the sanction of the directors, borrowed 500*l.* in his own name for the company, which was applied in paying the bankers and a judgment debt of the company. The company had the benefit of the plant, &c. Held, that the secretary could recover the amount from the company of the money *bonâ fide* applied for its benefit, with interest. *Troup's case.* vol. 29, p. 353

13. A company incorporated for the purpose of making a railroad cannot, with the dissent of one of the shareholders, carry on a trade distinct from the purposes for which it was incorporated. *Forrest* v. *The Manchester, Sheffield and Lincolnshire Railway Company.* vol. 30, p. 40

14. The words "unregistered company," in the 25 & 26 *Vict.* c. 89, s. 199 (2), mean a company not registered under any act, and not a company unregistered under that act. *Re The Torquay Bath Company.* vol. 32, p. 581

15. The projectors of a company registered under the 7 & 8 *Vict.* c. 110, sold to the provisional directors of an insurance company a treatise on the subject, and a leasehold at rack-rent, in consideration of a per-centage on the policies. Within a fortnight afterwards the projectors became directors. The transaction was acted on, but was not confirmed by a *general meeting* under the 29th section. Held, that it was binding on the company. *Re The Waterloo Life, &c. Assurance Company.* vol. 33, p. 204

16. Where a company, through their directors, hold out an officer of the company as their agent for a particular purpose and ratify his acts, they cannot afterwards dispute acts done by him within the scope of such agency. *Wilson* v. *West Hartlepool Harbour and Railway Company.* vol. 34, p. 187

17. An officer of a company had been publicly accustomed to enter into contracts on their behalf as to their surplus lands, though not authorized under the corporate seal, and his acts had always been sanctioned. Held, that a written contract of such a character entered into by him was binding on the company. *Ibid.*

18. The power given to a company, by the 41st section of "The Companies Act, 1856" (19 & 20 *Vict.* c. 47), to contract

for land by a person acting under its express or implied authority, is not, as regards a company formed under that act taken away by the Companies Act of 1862 (25 & 26 *Vict.* c. 89) although it repeals the act of 1856: for it is a "right or privilege" preserved by the 206th section. *Prince* v. *Prince.* vol. 35, p. 386

19. A company established for one purpose cannot, against the will of any dissentient minority (however small), undertake a business foreign to its original object. Thus a railway company cannot become a steamboat company or carry on a brewery. *Lyde on behalf, &c.* v. *The Eastern Bengal Railway Company.* vol. 31, p. 10

20. No portion of the funds of a company can be applied in procuring the means of carrying on a different undertaking, such as soliciting a bill in parliament to confer powers necessary for that purpose. *Ibid.*

21. It is not an abandonment of the objects of a company, if, where, being established for three or four purposes, it abandons one and carries on the others; provided such abandonment does not alter the fundamental principle of the company. *The Norwegian Titanic Iron Company (Limited).* vol. 35, p. 223

COMPENSATION.

[*See* SPECIFIC PERFORMANCE WITH COMPENSATION.]

1. Held, that the circumstance of a town-clerk having continued, for some time after he was removed from the office, to perform the duties of the offices of clerk of the peace and clerk of the magistrates until other clerks were appointed, did not in any way interfere with his right to compensation under the Municipal Corporation Act for the loss of those offices. *Attorney-General* v. *Corporation of Poole.* vol. 8, p. 75

2. The town-clerk of *Poole*, who held several offices at the time of the passing of the Municipal Corporation Act, was removed. Held, that he was entitled to compensation for the following connected offices: — solicitor to the corporation, clerk of the peace, magistrates' clerk, solicitor to the quay committee, solicitor to the water bailiff, and prothonotary of the weekly Court of Record; but that he was not entitled to compensation for the offices of solicitor to the coroner, under-sheriff, solicitor to the overseers and guardians of the poor of the town and county, solicitor to the surveyors of highways, and solicitor to the lamp and watch commissioners. *Ibid.*

COMPOSITION DEED.

[*See* CREDITOR'S DEED.]

COMPOUND INTEREST.

[*See* BREACH OF TRUST, INTEREST.]

1. Principles on which, in cases of breach of trust, trustees are charged with compound interest, and with the profits made in the investment of trust-money in trade. *Jones* v. *Foxall.* vol. 15, p. 388

2. Generally, an executor improperly retaining balances is charged with interest at four per cent.; but if, in addition, he commits a breach of trust, or changes money from a proper into an improper state of investment, he is charged five per cent. If he employ the trust-money in trade, he will be charged either with the profits, or five per cent. compound interest. *Ibid.*

3. From 1834 to 1850 a trustee, who ought to have withdrawn a trust-fund from a trading firm, of which he was a member, neglected to do so. He was charged with compound interest at five per cent., and with costs. *Ibid.*

4. An administrator who had, without reason, sold out stock specifically bequeathed to an infant and retained the produce after an order for payment, charged with compound interest. *Walrond* v. *Walrond.* vol. 29, p. 586

5. A firm of two bankers were accustomed to keep the accounts, both of the customers and of the partners, at compound interest. One partner died. Held, that, in the absence of any special agreement, it was not proper to continue the accounts as between the surviving partner and the estate of the deceased partner at compound interest. *Bate* v. *Robins.* vol. 32, p. 73

6. When a mortgage is given by a customer to his bankers for a fixed sum, and not for the running balance, the banker cannot include that sum in the banking account and charge compound interest on it. *Mosse* v. *Salt.* vol. 32, p. 269

COMPROMISE.

[*See* MISTAKE.]

1. A compromise by leave of the Court, held not to exclude a point of construction not then under consideration. *Bennett* v. *Merriman.* vol. 6, p. 360

2. A party who, upon a compromise, had executed a general release, claimed relief on the ground of a large item in which he was interested, having, by mistake, been omitted in the account. Held, that he was entitled to relief, but that to obtain it the release must be wholly set aside. *Pritt* v. *Clay.* vol. 6, p. 503

3. Parties agreed to compromise a suit, and that the "costs, charges, and expenses, as between solicitor and client," should be paid out of the fund. Held, that the taxing master ought to treat the

suit as properly constituted, and ought not, in the taxation, to consider whether Defendants, having interests similar to the Plaintiffs, should have been made co-Plaintiffs; and, secondly, that if any of the parties entering into compromise intended to challenge the propriety of the constitution of the suit, they ought to have distinctly stated, and have provided for it in the agreement. *Lucas* v. *Peacock.* vol. 8, p. 1

4. Parties are bound by the consent of their counsel; consequently, a petition to restore a petition, dismissed by consent, upon the ground that no authority had been given to counsel to consent, was dismissed with costs. *In re Hobler.* vol. 8, p. 101

5. On the trial of an issue, the common law counsel entered into an arrangement as to all the matters in dispute in the cause. Held, that the matters were not so distinct as to be beyond his authority. *Hargrave* v. *Hargrave.* vol. 12, p. 408

6. The validity of a compromise or family arrangement of disputed rights depends on the facts existing at the time, and will not be affected by subsequent judicial determinations, shewing the rights of parties to be different from what was supposed, or that one party had nothing to give up. *Lawton* v. *Campion.* vol. 18, p. 87

7. The children of *John*, a deceased remainderman, insisted as against their uncle *Charles* (a prior tenant for life in possession), that they were entitled, under the terms of settlement, to have their portions raised from the death of their father in 1831. Some discussion took place, and a bill was filed by them. An arrangement was come to by deed, which, proceeding on the foundation of the validity of the claim, compromised the amount of arrears of interest, and settled the amount of the future interest which *Charles* thereby engaged to pay. It having been afterwards determined, in another suit, that on the true construction of the settlement the claim of the children was unfounded, *Charles* instituted a suit to set aside the deed. Held, that if the right to have the portions raised in 1831 had formed one of the matters compromised, the transaction could not be disturbed, although the claim of the children had turned out to be wholly unfounded. But the Court having arrived at the conclusion that the parties had all proceeded on the foundation that the children's claim was unquestionable, and that all that had been compromised was the amount of arrears payable on that foundation, set aside the deed. *Ibid.*

8. A suit was instituted by *A.* against *B.* founded on an alleged agreement signed by *B.*'s testator. *A.* being ordered to produce, on oath, all documents in his possession, and being unable to find the agreement, induced *B.*, without stating this inability, and in the absence of his solicitor, to compromise the suit. *B.* filed a bill to set aside the compromise, and *A.* being still unable to produce the alleged agreement, and there being no secondary proof of its ever having existed, except the testimony of *A.* and his wife, the Court set aside the compromise. *Cooke* v. *Greves.* vol. 30, p. 378

9. Parties entered into an agreement for compromising a suit, and infants being interested, a reference was made to chambers, to ascertain whether it was for their benefit. Pending the reference, one of the adult parties became bankrupt, and afterwards the Court approved of the compromise. Held, that the compromise was binding on the bankrupt from the date, subject to the confirmation by the Court, and that the assignees could not recede from it. *Bousfield* v. *Bousfield.* vol. 31, p. 591

10. As to the practice of the Court in sanctioning a compromise on behalf of infants. *Brooke* v. *Lord Mostyn.* vol. 33, p. 457

11. If the Court, having all the necessary facts before it, sanctions a compromise on behalf of infants, and it afterwards turns out that the Court was mistaken, the infants have no redress, it being an error of judgment for which there is no remedy. *Ibid.*

12. But if, by suppression or misstatement, the Court has been led to an erroneous conclusion, the persons who have done this are amenable, and the Court will if possible set aside the transaction as against the innocent party. *Ibid.*

COMPULSORY POWERS.

1. A canal company had, under their act, compulsory powers of taking land. In 1797 they took the lands of Lord *W.*, an infant, and the value was assessed by the commissioners at a fixed rent of 14*l.* a year. The proceedings, however, were informal and not binding on the parties. The infant attained twenty-one in 1806, and from that time a rent had been paid by the company, varying from and not founded on that mentioned in the award. The representatives of *A. B.* had recently threatened to eject the company. The Court held, that though the company was not entitled to a conveyance on the ground of the adoption and long acquiescence in the award, still, whether the compulsory powers had expired or not, the company were entitled to take the lands, upon payment of a proper com-

pensation, in accordance with the decision in *The Duke of Beaufort* v. *Patrick*, 17 *Beav.* 60. *The Somerset Coal Canal Company* v. *Harcourt*. vol. 24, p. 571

CONCEALMENT.

[*See* MISREPRESENTATION.]

CONCURRENCE.

[*See* BREACH OF TRUST, WAIVER.]

CONDITION.

[*See* CONTINGENT GIFT, FORFEITURE, GIFT OVER, INDEPENDENT CONTRACT, REPUGNANT CONDITION.]

1. A bequest was made by a testator to his creditor, on condition of his paying his debt before, or to his (the testator's) executors immediately after, his death; the testator afterwards accepted a composition, and the remainder of the debt continued unpaid. Held, that the legatee was nevertheless entitled to the legacy. *Gath* v. *Burton*. vol. 1, p. 478

2. A testator gave one estate to *James*, upon trust to pay to testator's wife 18*l.* a year for life, and after her decease he gave the estate to *Thomas*. The testator also gave a second estate to *James*, upon trust to pay testator's wife 28*l.* a year for life, and after her decease he gave this estate absolutely to *James;* and he declared, that if *James* should neglect or refuse to pay the annuities from either of the said estates when they became due, that his wife should have power of selling the estates, and to appropriate the money to her own use. The rents being insufficient to pay the annuities: Held, that the widow had a right to sell unless *James* paid the full amount of the annuities, but that he was not personally bound to pay them. *Button* v. *Button*. vol. 2, p. 256

3. A testator gave a legacy to *A.* in the event of *B.* dying unmarried, but upon the express condition that *A.* should, within three years from the testator's death, pay to the executors all moneys due from him to the testator. Held, that the condition was substantially performed by a payment after the expiration of the three years, and that the legacy was payable. *Payne* v. *Hyde*. vol. 4, p. 468

4. Condition of forfeiture in case testator's wife's sister should reside with or dwell in the house or place of residence of his wife, or become part of her family. Held not illegal. *Ridgway* v. *Woodhouse*. vol. 7, p. 437

5. A condition divesting a vested gift is to be strictly construed. *Ibid.*

6. The Plaintiff, deliberately and with full notice, accepted the benefits under his mother's will, which "prohibited" him from setting up any claim, on account of any "error, irregularity, or impropriety" in the execution of the trusts of her father's will. Held, that he could not maintain a suit against the executor of the father's will, to make him accountable for the profits made by the employment of part of the trust funds in his business. *Egg* v. *Devey*. vol. 10, p. 444

7. A testator bequeathed his property to his children equally, but subject to the condition, that if it appeared by his ledger that any of his children were indebted to him, the amount should be deducted from his share. Held, that a debt appearing in the ledger, though barred by the statute, ought to be deducted. *Rose* v. *Gould*. vol. 15, p. 189

8. The testator gave an estate to *A.*, "with an injunction never to sell it out of the family; but, if sold at all, it must be sold to one of his brothers." Held, that the restriction on alienation was inoperative. *Attwater* v. *Attwater*. vol. 18, p. 330

9. Where a legacy is given on condition, it must be strictly and literally performed; but where a bequest was made to *A.*, on condition that he conveyed his estates to *B.* and *C.*, in such shares as shall be determined by [*blank*], it was held, that the gift was not rendered ineffectual by reason of the blank. *Robinson* v. *Wheelwright*. vol. 21, p. 214

10. A testator directed his trustees to allow *A. B.* to occupy a mill, &c. so long as he should think proper so to do, "he nevertheless keeping" the premises "in good and tenantable repair, and paying" a rent of 100*l.* *A. B.* accepted the gift, but the premises were afterwards totally destroyed by accidental fire. Held, that *A. B.* was bound to reinstate them, and was liable for the rent in the meanwhile, and that he could not escape from this liability to rebuild by declining any longer to retain them. *Gregg* v. *Coates*. vol. 23, p. 33

11. Devise of real estate to *A.* for life, and after her decease to *B.* and *C.* and *D.* and *E.* (an infant), "provided she lives to attain the age of twenty-one years." Held, that this was a condition subsequent, and the tenant for life having died during the minority of *E.*, that *E.* was entitled to her share of the rents until she attained twenty-one. *Simmonds* v. *Cock*. vol. 29, p. 455

12. Conveyance in fee, with a restriction by way of use against carrying on certain trades on the property, held binding. *Hodson* v. *Coppard*. vol. 29, p. 4

13. Distinction between conditions precedent and subsequent.

Bequest in trust for *A. B.* for life, in

case he should marry *C. D.*, and after his decease. in trust for his eldest child who should be living at his decease and should attain twenty-one. But in case *A. B.* should not marry *C. D.*, then the testator directed that the bequest should not take effect, but go over. *A. B.* married another woman in the life of the testator, with the testator's consent. Held, that the condition was precedent, and was not dispensed with by the testator's consent. *Davis* v. *Angel.* vol. 31, p. 223

14. Property was, by will, limited to the Defendant, on condition of his settling some Scotch estates within a limited time on trusts, the validity and effect of which were doubtful. The defendant settled the estates within the time in general terms, on the persons on whose behalf the condition was imposed. Held, that this was a sufficient compliance with the condition. *Scarlett* v. *Lord Abinger.* vol. 34, p. 338

15. A condition of marriage with consent. Held, subsequent and not precedent, and its performance having become impossible, by the act of God, was dispensed with. *Collett* v. *Collett.* vol. 35, p. 312

16. A testator gave a share of his residuary real and personal estate to his daughter, her heirs, executors, administrators, and assigns, to be paid at twenty-one or on her day of marriage, provided it should take place with the consent of his widow. There was a gift over in case of her death "without having attained twenty-one years or been so married afterwards." Held, that the consent was a condition subsequent, and that the daughter having married without such consent (the widow having died in the meantime) had a vested interest, and that her share ought to be transferred to the trustees of her settlement, though she was still an infant. *Ibid.*

CONDITIONAL SALE.

[*See* MORTGAGE.]

1. An agreement, made upon an advance of money, to convey property, and containing a power of redemption within a given time, and in default the sale to be absolute. Held, under the circumstances, to be a conditional sale and not a mortgage. *Perry* v. *Meddowcroft.* vol. 4, p. 197

2. *A.* conveyed lands to *B.*, on trust, in case a sum and interest should not be paid by a day named, to sell, and after payment of principal, interest and costs, to reconvey the lands remaining unsold, or pay over the residue of the money; and *B.* covenanted not to sell without giving six months' notice, but the deed contained no proviso for redemption. Held, that this was a mere mortgage, and that *A.* was therefore entitled to six months' time to redeem. *Bell* v. *Carter.* vol. 17, p. 11

CONDITIONS OF SALE.

[*See* TIME OF THE ESSENCE.]

1. A sale was made by a mortgagee under a power, subject to certain special conditions (stated in the text). Held, that they were not of such a depreciating character as to invalidate the sale. *Hobson* v. *Bell.* vol. 2, p. 17

2. Observations on special conditions of sale. *Hyde* v. *Dallaway.* vol. 4, p. 606
Paterson v. *Long.* vol. 6, p. 590

3. By the conditions of sale, no further evidence of identity was to be required than what was afforded by the abstract and the documents therein abstracted. The descriptions in the documents differed amongst themselves, and from the description in the particulars of sale. Held, that the purchaser was entitled to have further proof of the identity. *Flower* v. *Hartopp.* vol. 6, p. 476

4. If conditions of sale simply state the facts, and stipulate that the purchaser shall take such title or such interest as the circumstances detailed would confer upon him and no other, the purchaser must accept it, whatever it may be; but if they go on to state, not as a conclusion of law from the circumstances detailed, but as a positive fact, that the vendors have power to sell the fee, the purchaser is not precluded from inquiring whether the vendors have anything to sell, as their power so to do may have arisen from separate and independent sources. *Johnson* v. *Smiley.* vol. 17, p. 223

5. Under special conditions, on the sale of leaseholds, it was provided, "that possession should be deemed conclusive evidence of the due performance or sufficient waiver of any breach in the covenants in the lease, up to the completion of the sale." Held, that this would cover all breaches down to the contract, but not breaches of covenant subsequently committed by the vendor, by which a forfeiture was incurred. *Howell* v. *Kightley.* vol. 21, p. 331

6. Conditions of sale must be construed strictly against the person who frames them. *Greaves* v. *Wilson.* vol. 25, p. 290

7. A condition, that the vendor shall be at liberty to rescind the contract, if the purchaser should "shew any objection of title, conveyance or otherwise, and should insist thereon;" was held, not to authorize the vendor to rescind the contract,

without attempting to answer the requisitions, although some of them were untenantable. Held also, that he was bound to answer them, and give the purchaser an opportunity of either waiving or insisting upon them. *Greaves* v. *Wilson*. vol. 25, p. 290

8. Where conditions of sale are not drawn *bonâ fide*, but are intended to cover difficulties arising from facts uncommunicated, they will not preclude the purchaser from taking the objection. *Jackson* v. *Whitehead*. vol. 28, p. 154

9. A testator, having a leasehold, bequeathed his residue to his widow for life, and afterwards to two trustees for sale; he appointed his widow, and the two trustees his executors. The widow remained in possession twenty-three years, and after her death the executrix of the surviving trustee sold the property, subject to a condition of sale, that the purchaser should admit the assent of the executors to the bequest of the leaseholds to the trustees. Held, that such a condition was valid, although the vendor did not state that the administratrix *de bonis non* claimed to have the power of selling. *Ibid.*

10. Special conditions of sale, limiting the extent of title, held to be no excuse for a purchaser not insisting on the production of a deed beyond those limits of which he had notice. *Pete* v. *Hammond*. vol. 30, p. 495

11. By the conditions of sale relating to leaseholds it was stipulated, that the production of the last receipt should be conclusive evidence that all the covenants had been performed. Held, that the production of such a receipt prevented the purchaser from taking the objection that the lease had been forfeited by reason of the dilapidated state of the premises. *Bull* v. *Hutchens*. vol. 32, p. 615

CONDUCT OF CAUSE.

Four suits were consolidated, and the conduct given to the Plaintiff in one of them, who was a devisee and legatee. Held, that he was entitled to his extra costs which he had properly incurred in the prosecution of the decree. *Lockhart* v. *Hardy*. vol. 10, p. 292

CONDUCT OF SALE.

Ordinarily, the conduct of a sale directed by the Court is committed to the Plaintiff; but when it appears for the benefit of the parties, it will be given to a Defendant. This right does not, however, depend on the extent of the interest of the parties in the property. *Knott* v. *Cottee*. (No. 4.) vol. 27, p. 33

CONFIDENTIAL COMMUNICATION.

1. Communications between a person and his legal adviser, who had been a solicitor, but at the time of the communications had, without his knowledge, ceased to practise, are privileged. *Calley* v. *Richards*. vol. 19, p. 401

2. The communications had reference to the validity of a will, and passed between the Plaintiff and his legal adviser between the date of the will and the death of the testator. It was objected that they could not have taken place in contemplation of a suit respecting the validity of the will, and were therefore not protected. Held, that this did not take them out of the rule. *Ibid.*

CONFLICT OF LAWS.

[*See* FOREIGN LAW.]

Under a Scotch settlement, a wife would, by the general law of Scotland, have power to give valid discharges for a reversionary interest in a chose in action comprised in it. Held, that the removal of her domicil to England did not superinduce a disability in her to give a receipt to trustees for the amount. *Duncan* v. *Cannan*. vol. 18, p. 128

CONSENT.

[*See* ORDER BY CONSENT.]

1. Power of sale of realty given to trustees with the consent of the tenant for life, held exercisable after his bankruptcy, with the consent of the tenant for life and of all persons who had become interested in his estate. *Eisdell* v. *Hammersley*. vol. 31, p. 255

2. Trustees were empowered to sell real estate, but not without the consent of seven tenants for life of the produce. After the death of one of the tenants for life, the trustees entered into a contract to sell, with the consent of the surviving six and of the absolute owner of the seventh share. Held, that a sale required the assent of all the seven tenants for life, and that a good title could not be made. *Sykes* v. *Sheard*. vol. 33, p. 114

CONSIDERATION.

[*See* CONTRACT, UNCERTAINTY.]

Upon the eve of a sale by the sheriff, *A. B.* (a stranger) agreed to guarantee the judgment debts, upon the judgment creditor "consenting to postpone the sale under the execution." It turned out that the consent of another party was necessary in order to prevent the sale, and in conse-

quence the sale took place. *A. B.* gave notice, that the consideration having failed, the guarantee was at an end. Held, that *A. B.* was not liable under the guarantee. *Cooper* v. *Joel.* vol. 27, p. 313

CONSIGNMENT.

A consignor who has purchased goods on account and at the risk of his correspondent, and delivered them to the carrier, has no right, by reason of a variation of the accounts between him and his correspondent, or of a disagreement between them, to depart from his duty and deliver them to another person; and a party taking from the consignor with notice of the circumstances, is subject to the rights of the correspondent. *Green* v. *Maitland.* vol. 4, p. 624

CONSOLS.

[*See* INVESTMENT.]

CONSTRUCTION.

[*See* "AND" READ "OR," CHILDREN, DYING WITHOUT ISSUE, "EJUSDEM GENERIS," IMPLICATION (GIFT BY), LAST ANTECEDENT, "OR" READ "AND," PAROL EVIDENCE, "PER CAPITA" AND "PER STIRPES," RECITAL, REFERENCE (GIFT BY), WILL (CONSTRUCTION).]

1. Principles on which the Court proceeds in putting a construction upon inconsistent clauses in a settlement. *Bush* v *Watkins.* vol. 14, p. 425
2. Where a deed contains inconsistent clauses, the Court very reluctantly rejects one altogether; and never, unless it is absolutely impossible to reconcile the inconsistencies. *Ibid.*
3. In construing a will, if two passages in it are directly opposed to each other, the latter will prevail; but where there is a mere inconsistency, the Court will endeavour to discover, from the whole, the real meaning of the testator, and, if possible, reconcile all its parts. *Brocklebank* v. *Johnson.* vol. 20, p. 205
4. The general words of a statute are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be put upon those words consistently with the intention of preserving the existing policy untouched; but the title and preamble of the General Inclosure Act being quite general, the words of the 147th section appear to be so general, as to make it impossible to limit them to exchanges of freeholds of the same species, notwithstanding inconveniences and seeming injustice to parties. *Minet* v. *Leman.* vol. 20, p. 269
5. In the construction of wills the Court looks not only to the terms of the will itself, but to the surrounding circumstances and the state of the parties. *Paxmore* v. *Huggins.* vol. 21, p. 103
6. A testator made a voluntary settlement of some real estates. He afterwards by his will devised other real estates to nearly the same uses. Held, that the deed could not be referred to for the purpose of construing the will. *Randall* v. *Daniel.* vol. 24, p. 193
7. A draft lease was prepared by the lessor in pursuance of a written contract, which was not objected to by the lessee, who afterwards refused to complete. Held, that the draft lease could not be used for the purpose of controlling or explaining the contract itself. *Hayward* v. *Cope.* vol. 25, p. 140
8. When the terms of a contract are plain, usage can little affect the construction to be placed upon it; but when it is ambiguous, the usage for a long time may influence the judgment of the Court, by shewing how it was understood by the original parties to it. *Boldero* v. *East India Company.* vol. 26, p. 316
9. Rules of construing statutes, where a general enactment in it would override a particular one, and where two parts of it are contradictory. *Pretty* v. *Solly.* vol. 26, p. 606
10. The proper mode of construing any written instrument is to give effect to every part of it, if this be possible, and not to strike out or nullify one clause in a deed, unless it be impossible to reconcile it with another and more express clause in the same deed. *In re Strand Music Hall Company (Limited).* vol. 35, p. 153

CONSTRUCTIVE NOTICE.

[*See* NOTICE.]

CONSTRUCTIVE TRUST.

[*See* TRUST (CREATION).]

A father, by agreement, took all his son's property, undertaking to pay his debts. Held, that in the absence of proof to the contrary, the son was entitled to the surplus, if any. *May* v. *May.* vol. 33, p. 81

CONTEMPT OF COURT.

[*See* CONTEMPT (PROCEDURE), PROCESS.]

1. Pending proceedings in this Court, attacks on the plaintiff and his witnesses were published, representing those proceedings as vexatious, and that the witnesses had in their evidence been guilty

of perjury. Held, that this, being calculated to disturb the free course of justice, was a contempt of Court. *Littler* v. *Thomson.* vol. 2, p. 129

2. A party served with an order obtained *ex parte* may be guilty of contempt for disobedience thereof, in a case where the order ought not to have been made. *Fenney* v. *Humphrey.* vol. 4, p. 1

3. The plaintiff was ordered to pay some costs to the Defendant, and, on the other hand, the Defendant was ordered to pay other costs to the Plaintiff. The Plaintiff, being in contempt for nonpayment of the costs, moved that the costs might be set-off. Held, that it was competent for the Plaintiff, though in contempt, to refer, for scandal and impertinence, an affidavit filed on the part of the Defendant in opposition to the motion. *Cattell* v. *Simons.* vol. 5, p. 396

4. Held, that a Plaintiff, notwithstanding he was in contempt, might move to set off costs. *Cattell* v. *Simons.* vol. 6, p. 304

5. Depositions under a commission having been suppressed with costs, the payment of those costs was made a condition for granting a new commission. *Chameau* v. *Riley.* vol. 6, p. 419

6. It is a contempt to interfere and prevent an infant obeying the order of the Court to convey. *Thomas* v. *Gwynne.* vol. 8, p. 312

7. A party to whom costs are awarded may proceed in the taxation, notwithstanding he may be in contempt. *Newton* v. *Rickette.* vol. 11, p. 67

8. Motion to commit for insufficiency of third examination refused. *Allfrey* v. *Allfrey.* vol. 12, p. 620

9. If a Defendant in contempt files his answer mithout paying the costs of his contempt, the Plaintiff is entitled to have his further answer taken off the file, but the time for excepting to the defendant's answer runs from the filing of the answer, and not from the time when the costs of the contempt are paid. *Coyle* v. *Alleyne.* vol. 16, p. 548

CONTEMPT (PROCEDURE).

1. Discharge under 1 *Will.* 4, c. 36, could not be waived. *Haynes* v. *Ball.* vol. 4, p. 101

2. Consent by a party to submit to a serjeant-at-arms could not be enforced. *Henley* v. *Stone.* vol. 4, p. 392

3. The 5th order of 1 *Will.* 4, c. 36, s. 15, requiring a party in custody, &c., to be brought to the bar of the Court, is satisfied by bringing him before the Judge at his private residence. *Clarke* v. *Clarke.* vol. 4, p. 497

4. A Defendant was taken under an attachment for not answering, and not having been brought to the bar within the proper time, was discharged. The Court directed, that unless he answered within a fortnight, a new attachment should issue against him. *Robey* v. *Whitewood.* vol. 5, p. 399

5. The 11th Order of *August*, 1841, as amended by the 6th Order of *April*, 1842, Ord. xxx. 4, does not apply to a case of default by a party in producing deeds in the Master's office pursuant to the decree, in which case the Serjeant-at-Arms goes upon a disobedience of the four-day order. *Hobson* v. *Sherwood.* vol. 6, p. 63

6. A party moving for his discharge, under the 13th rule of the 1 *Will.* 4, c. 36, might be at the same time remanded, under the 12th rule. *Potts* v. *Whitmore.* vol. 8, p. 317

7. A Defendant, in contempt for want of answer cannot file a demurrer and answer, and the irregularity is not waived by the Plaintiff's taking an office copy thereof. *The Attorney-General* v. *Shield.* vol. 11, p. 441

8. A party in custody upon attachment for contempt of this Court was erroneously discharged by the Court of Exchequer. The order of discharge was afterwards rescinded; but that Court held, that it had no jurisdiction to recommit. This Court directed new attachments to issue. *Wenham* v. *Bowman.* vol. 11, p. 138

9. The Plaintiff was taken under an attachment for costs under 20*l.* The party to whom the costs were payable obtained a vesting order; but the Plaintiff refused to file his schedule. Held, that he was not entitled to be discharged from the attachment. *Ibid.*

10. Writs of attachment for want of answer, though regularly issued, discharged, and time given the Defendants to answer on payment of costs, the defendants having had reasonable grounds for thinking that an answer would not be required without previous intimation. *Siderfield* v. *Thatcher.* vol. 11, p. 201

11. The sum of 13*s.* 8*d.* is still the proper amount payable to clear a contempt on an attachment executed. *Brown* v. *Lee.* vol. 11, p. 379

12. Property was held by *A.*, *B.*, and *C.*, in trust for *D.* for life, with remainder to her children. The children filed a bill against the trustees for a breach of trust, and, by the decree, the trustees were ordered to replace the fund. *C.*, afterwards, being in contempt for non-performance of the decree, filed a bill against the other trustees, and the tenant for life, alleging that they had received and retained the produce of the breaches of trust, and seeking to make them and the life estate liable to indemnify *C.* Held, that *C.*'s contempt and non-performance of the

former decree did not prevent his filing the second bill. *Taylor* v. *Taylor*. vol. 12, p. 220

CONTINGENT GIFT.

[*See* CONDITION, LAPSE.]

1. A testator gave his property to his wife for life, and "if he should survive her" [which did not happen], he ordered a sale and gave the produce amongst his sisters. Held, that the power of sale and the gift of the produce took effect on the death of the wife, although the testator did not survive her. *Tuer* v. *Turner*. vol. 18, p. 185
See *Cattley* v. *Vincent*. vol. 15, p. 198
Patch v. *Parkes*. vol. 30, p. 415

2. Bequest of long annuities to *A*. and *B*. jointly for their natural lives. "In case of one or both of their deaths before mine," the interest to *C*. for life, &c. &c. *A*. and *B*. survived the testator. Held, by the Master of the Rolls, that the gift to *C*. failed, but the Lords Justices were of a different opinion. *Boosey* v. *Gardner*. vol. 18, p. 471

3. As a general rule when a bequest is to take effect after the failure of a prior gift, the total failure of the latter does not prevent the ulterior bequest taking effect. *Tennant* v. *Heathfield*. vol. 21, p. 255

4. A testator had a power of appointing 10,000*l*. among his children, which went to them equally in default of appointment. By his will he gave his son an annuity, to become void if no appointment should be made of the 10,000*l*., or if any appointment should be made whereby the son would be benefited. The testator only appointed 5,000*l*. in favour of his daughter, and the son took part of the residue in default of appointment. Held, that the annuity had not ceased. *Arnott* v. *Tyrrell*. vol. 21, p. 49

5. A contingent estate in fee under a shifting clause may be devised both by the old and new law. *Ingilby* v. *Amcotts*. vol. 21, p. 585
See *Hodson* v. *Coppard*. vol. 29, p. 4

6. The testator directed the interest of his residue to be applied to the maintenance and support of his son and his son's wife and children, and after the death of the survivor of his son and wife, he directed such interest to be applied, by his executors, in the support of and bringing up the child or children of his son during their minority or minorities, and as they severally attained the age of twenty-one years he gave and bequeathed the share of each child to be paid to her or him, and in case only one of such children should live to attain the age of twenty-one years, then he gave the whole to such one child absolutely. Held, that the gift to the children was contingent on their attaining twenty-one. *Tracy* v. *Butcher*. vol. 24, p. 438

7. A testator bequeathed an annuity of 100*l*. to his daughter while sole, but on her marriage, and on some adequate provision made by some settlement for her life, and to the use of her issue, which he directed should be made, he bequeathed to her 2,500*l*. In default of such issue, he bequeathed that sum "to the children of his son." The daughter had one child only, who died in her lifetime, of tender years. Held, that the gift over to the children of the son altogether failed. *Findon* v. *Findon*. vol. 24, p. 83

8. The words "after the death of *A*. *B*." held not to import contingency, but to be merely words of reference, shewing that the gifts then in course of expression were subject to the prior gifts, and were not to have effect in possession until those prior gifts were satisfied or had become inoperative. *Franks* v. *Price*. vol. 30, p. 182

9. A testator bequeathed his real and personal estate in trust to pay, for the benefit of his son (a lunatic), an annuity, until he should be able to manage his affairs, and if he ever returned to a sound mind, then he directed he should "divide" his residuary estate with his sister. The testator then gave the whole residue (subject to the contingency of his son's becoming of sound mind) to his daughter for life, and afterwards as she should appoint:—Held, that the daughter took the whole, subject to the annuity and to the contingency; but that if the son recovered his reason, he would be entitled not only to one-half of the capital but to one-half of the income from the testator's death. *Hole* v. *Davies*. vol. 34, p. 345

10. A testator bequeathed his leasehold estate to trustees, in trust, out of the rents, to pay an annuity to his daughter, and he proceeded:—"And I hereby direct, that if my son *Henry*, now absent, shall, within five years, make his claim to my trustees, he shall be entitled to and receive one moiety of my said leasehold estate, subject however, together with the other moiety thereof in favour of my son *William*, to the annuity and trusts before mentioned." *Henry* made no claim. Held, that *William* was entitled to a moiety of the leasehold subject to the annuity, and that the gift to him was not contingent on *Henry*'s claiming. *Partridge* v. *Foster*. (No. 2.) vol. 35, p. 545

CONTRACT.

[*See* ABANDONMENT OF CONTRACT, AGREEMENT, CONSIDERATION, ILLEGALITY AND IMMORALITY OF CONTRACT, INDE-

PENDENT CONTRACT, PART PERFORMANCE, PRIVITY, RESCINDING CONTRACT, STATUTE OF FRAUDS, VENDOR AND PURCHASER, UNCERTAINTY.]

1. A contract requires two parties to it, and a man in one character can, with difficulty, contract with himself in another character. *Collinson* v. *Lister*. vol. 20, p. 356

2. Where an offer in writing is made by the owner to sell an estate on specified terms, and this is unconditionally accepted, there is a binding contract which neither party can vary; but the owner is entitled, at any time before his offer has been definitely accepted, to add new terms to his proposal. If these be refused, the treaty is at an end. *Honeyman* v. *Marryat*. vol. 21, p. 14

3. A sister, in a writing addressed to her brother, after stating, "as you have kindly promised, if I do not make a will, my wishes shall be fulfilled," expressed her wish that *A. B.* and others should have the sums therein specified. She died intestate, and the brother inherited her property. There was some evidence of the brother's having seen the writing in her life, and of his having afterwards expressed an intention to carry his sister's wishes into effect, but he died without having done so. The Court held, that there was not sufficient evidence of a contract on the part of the brother, to enable it to enforce the performance of the sister's wishes. *Chester* v. *Urwick* (No. 3). vol. 23, p. 407

4. The plaintiff asserted that he had contracted to purchase some shares from the defendant, but the contract was not in writing, the fact was contested and it was proved by the plaintiff alone. There was, however, proof that the plaintiff had paid the defendant money, but on what account did not appear, and that the defendant had admitted, in writing, that the shares belonged to the plaintiff, though they had not been transferred for fourteen years. Held, that the contract was sufficiently proved. *Parish* v. *Parish*. vol. 32, p. 207

5. A proposal to receive tenders for certain things to be sold (specifying no limitation or qualification), and an acceptance (also specifying no limitation or qualification), is a contract for the whole. *Thorn* v. *The Commissioners of Her Majesty's Works and Public Buildings*. vol. 32, p. 490

6. The defendants advertised that offers would be received for old *Portland* stone of *Westminster Bridge*. The plaintiffs made an offer for the stone of a particular quality, which was accepted. Held, that this was a contract for the purchase of all the stone of that quality. *Ibid.*

7. An agreement entered into between *A. B.* (the assignee of a tenant for life without impeachment of waste) and the defendants (the remaindermen) by which it was agreed, 1st, that *A. B.* should be entitled to the timber as if cut in *August* previous; 2ndly, that the defendants should carry out the agreement; 3rdly, that *A. B.* should have no greater right than he had in *August*; 4thly, that *A. B.* should not cut the timber until *December*. Held, that the remaindermen received no consideration for the agreement, and that it was *nudum pactum*. *Cochrane* v. *Willis*. vol. 34, p. 359

8. After some negotiations a landlord, by his agent, stated, in a letter to his tenant, the terms on which he would renew his lease, but added, he would expect an answer within a month. The landlord died seven days afterwards; and on the following day the tenant and agent, both of whom were then ignorant of the death, met, and the tenant signed his acceptance of the terms. Held, that there was no binding contract. *Carr* v. *Levingston*. vol. 35, p. 41

CONTRIBUTION.

[*See* EQUALITY, JOINT LIABILITY.]

1. A contribution was directed amongst specific legatees for payment of the debts and costs of suit. One of such legatees became insolvent, and by his nonpayment, the fund raised was deficient. The Court directed an additional contribution amongst the solvent legatees. *Conolly* v. *Farrell*. vol. 10, p. 142

2. A suit was instituted against the directors of an abortive company, to make them liable for acts of mismanagement and for the misapplication of its funds. This was compromised by an order on the defendants to pay a fixed sum. One of them having paid more than his share, Held, that he could sustain a suit simply for contribution in respect of the compromise, and that the co-directors were not entitled, without a cross bill, to make the plaintiff, at the same time, account for his general liabilities to the company. *Prole* v. *Masterman*. vol. 21, p. 61

3. By the decree the estates of two deceased trustees were declared severally liable to replace a fund. The representatives of one only admitted assets, and the decree directed payment by them, and an account of the estate of the other. The whole being paid by the former, Held that their right to contribution against the estate of the latter constituted a mere simple contract debt, although,

as against both estates, the demand was a specialty debt. *Priestman* v. *Tindall.* vol. 24, p. 244

4. A suit in equity is maintainable by a member of a mutual marine insurance society against the managing committee, to recover by contribution among the members the amount of his loss. *Hutchinson* v. *Wright.* vol. 25, p. 444

5. Two trustees (*A.* and *B.*) were ordered to pay a sum of money into Court, this was paid by *A.* alone. They had severed in their defences and obtained but one set of costs. *B.*'s share of the costs was ordered to be paid to *A.* by way of contribution. *Prince* v. *Hine.* (No. 2.) vol. 27, p. 345

6. As to the right of co-trustees, who have committed a breach of trust, to contribution in a suit to make them replace the trust fund. *Fletcher* v. *Green.* vol. 33, p. 426

7. Contribution between trustees cannot be enforced in a suit instituted against them to repair a breach of trust for which they are all liable. *Fletcher* v. *Green.* (No. 2.) vol. 33, p 513

8. A large balance was found due jointly from a trustee and the representatives of a deceased trustee, but costs were given to both when such balance had been paid. It being admitted that no part of it could be recovered from the estate of the deceased trustee: Held, that the surviving trustee, on payment by him of the share of the deceased trustee, was entitled to a lien for it on the costs awarded to the representatives. The Court ordered such costs to be carried over to a seperate account, with liberty to apply. *Birks* v *Micklethwait.* vol. 33, p. 409

CONTRIBUTORY.

[*See* COMPANY, SHARE, SHAREHOLDER.]

1. By a deed of settlement of a joint stock company, executors were not to be proprietors. Held, nevertheless, that they were contributories, and might maintain a petition to wind up. *In re The Norwich Yarn Company.* vol. 12, p. 366

2. By the deed of settlement of a public company, the directors had a power of pre-emption of shares, at a price to be ascertained from the last sales appearing in "the transfer register book," and then, "but not before," all future liabilities of the vendors were to cease. In 1840, the directors purchased of *A. B.* a number of scrip shares, but having kept no such book, the specific directions were not and could not be followed. The company was afterwards wound up, when it was sought to charge *A. B.* as a contributory, but held that the company was not entitled to treat the transaction as void, by reason of the non-observance of the forms which their own irregularity and neglect had made it impossible to observe. *Ex parte Bagge Re The Northern Coal Mining Company.* vol. 13, p. 162

3. A prospectus was issued for the establishment of a company. *A. B.* took shares and paid his deposit. Afterwards, at a meeting of shareholders, the scheme was greatly varied. *A. B.* was present, but took no part in the matter, and never after in any way interfered. The company was formed on the new scheme, and failed. Held, that *A. B.* was not a contributory. *Goldsmith's case.* vol. 16, p. 262

4. *A. B.* took ten shares in a company intended to be formed for specified objects and on stated principles. The projectors afterwards materially varied its character. *A. B.* did no act by which he assented to the variation or adopted the new company: Some time after the directors agreed that nine of *A. B.*'s shares should be cancelled, and that *A. B.* should remain a shareholder for one. Held, that *A. B.* was not a contributory in respect of the nine shares. *Meyer's case.* vol. 16, p. 383

5. Executors who, after the death of their testator, had purchased further shares, held, as to the latter, to be contributories without qualification, though they had been treated as executors in regard to such further shares. *Spencer's case—Re Newcastle, &c. Banking Company.* vol. 17, p. 203

6. Directors permitted a class of dissentient shareholders in an embarrassed company to transfer their shares to the company. under a power in the deed, upon payment of a sum of money, which it was arranged should be paid to one of the directors in discharge of a debt due from the company. Held, that the transaction was void as being a benefit to trustees, and, on winding up the company, that the dissentients still remained shareholders. *In re Cameron's Coalbrook, &c. Railway Company, Ex parte Bennett.* vol. 18, p. 339

7. A director of a company is in a very different position from that of an ordinary shareholder, for having the means of seeing that all the formalities of transfer required by the constitution of the company are complied with, he is bound, in transferring his own shares, to see to the regularity of the transfer; if he neglect to do so, and there be a want of formality therein, he remains a contributory. *In re Newcastle-upon-Tyne Marine Insurance Company, Ex parte Brown.* vol. 19, p. 97

8. A company, being in an unprosperous, condition, its operations, accounts, audits, dividends, &c., being suspended,

and its shares worthless, the auditor sold his shares to the managing director, and gave notice, and the transfer was entered in the minute-book as approved by the directors. The transfer was, in fact, informal. The Court, doubting the *bona fides* of the transaction, and seeing that proper steps had not been taken to ascertain that all the necessary formalities had been complied with, Held, that the auditor was still a contributory. *In re Newcastle-upon-Tyne Marine Insurance Company, Ex parte Henderson.* vol. 19, p. 107

9. Where, after the objects of a company have totally failed, and it is insolvent, and practically at an end, other persons are induced to join the concern, and even sign the deed, by misrepresentations made by the directors as to the flourishing state of the concern, they are not liable to be made contributories. *Bell's case. In re The Universal Provident Life Association.* vol. 22, p. 35

10. The result would be different, where the misrepresentations are made by the proprietors on the original constitution of the company, and the question of contribution arises between a number of innocent shareholders. *Ibid.*

11. A director of a joint stock company proposed to retire from the company and be released from all liability. The board assented to this, on his making a loan to the company. He did so, and transferred all his shares to some of the continuing directors. The Court held that the transaction was invalid, and placed his name on the list of contributories for the whole of the shares. *Daniell's case, Re The Universal Provident Life Association.* vol. 22, p. 43

12. *A. B.* became a shareholder and director of a company, on the representations of one of the directors, that it was in a flourishing condition, whereas it was on the verge of insolvency. Held, that the misrepresentation did not relieve *A. B.* from being a contributory. *Holt's case, Re The Universal Provident Life Association.* vol. 22, p. 48

13. There being a disagreement between two sections of directors of a joint stock company, it was agreed that one section should retire, and transfer their shares to the continuing directors. The shares were transferred accordingly, and were afterwards again transferred, and, at the date of the winding-up order, stood in the names of other persons. The Court held, that the first arrangement was invalid, and that the retiring directors were still contributories, notwithstanding the subsequent transfers. *Munt's case, In re The Universal Provident Life Assurance Association.* vol. 22, p. 55

14. A father voluntarily transferred shares in an incorporated company to his infant son. The company was afterwards wound up (the son being still an infant). Held, that the father was a contributor. *Reid's case.* vol. 24, p. 318

15. A father applied for shares in a company in the name of his son, and he paid the deposit; the company, however, refused to allow him to execute the deed on behalf of the son. Having done no further act, Held, that the father was not a contributory. *Maxwell's case.* vol. 24, p. 321

16. Provisional directors entered into an agreement to give *A. B.*, the projector, 2,500*l.* in money, and 2,500*l.* in paid-up shares. The agreement did not appear in the deed of settlement which *A. B.* had executed for 350 of those shares. Held, that the company were not bound by the agreement, and although they repudiated it, still that *A. B.* was liable unconditionally as a contributory in respect of the 350 shares. *Nickoll's case, Re The Cosmopolitan Life Assurance Company.* vol. 24, p. 639

17. Where a person takes shares in a company through false representations, he will not be placed on the list of contributories if the misrepresentations be made by the company, but he will, if they be made by a third person. *Ayre's case, In re The Deposit and General Life Assurance Company.* vol. 25, p. 513

18. A person was induced to take shares in a company (insolvent at the time) by the false statements contained in the report of the directors, and the erroneous accounts submitted by them to the general meeting. Having discovered the company to be insolvent, he repudiated the shares. Held, that he was not a contributory. *Ibid.*

19. *A.* gave to *B.* a cheque for 50*l.* to obtain fifty shares in a company. *B.* applied for fifty shares, and they were allotted to *A.*, and his name was entered in the books, &c. as a shareholder. It did not appear that anything had been done further than that *A.* had refused to sign the deed. Held, that not having repudiated the shares, he was a contributory. Held, also, that a change in the company's books in the number of the shares first allotted to *B.* did not relieve him from his liability. *The Electric Telegraph Company of Ireland, Cookney's case.* vol. 26, p. 6

20. Prior to the Joint Stock Companies' Registration Act, an un-incorporated company was established, whose shares passed by delivery. The Court (without expressing any opinion on the legality of the company) held, that a holder of shares at the date of the winding-up order, who was not an original allottee, but had purchased them and received

dividends, was a contributory; liberty was reserved to him to move to discharge the winding-up order, on the ground of the illegality of the company, *Barclay's case, In re The Mexican and South American Mining Company.* vol. 26, p. 177

21. Shares in a scrip company passed by mere delivery. Held, that *London* bankers, who had in their hands, at the date of the winding-up order, shares belonging to foreign correspondents, and on which they had received the dividends, were not contributories. *Finlay Hodgson's case, In re The Mexican and South American Mining Company.* vol. 26, p. 182

22. Where, by false representations of the directors of a company, a stranger is induced to take shares directly from the company, the transaction is not binding in equity, and he is not a contributory. But if, by such representations of the directors, he takes them from a third party, he is a contributory. *Duranty's case, In re The Liverpool Borough Bank.* vol. 26, p. 268

23. The shares of a company were transferable by delivery. After the company was in difficulties and a few days before an order was made to wind it up, a shareholder transferred his shares to his foreman. The Court, thinking that the transfer was not *bonâ fide*, Held that it was inoperative, and that the transferor was a contributory. *Lund's case.* vol. 27, p. 465

24. A shareholder, believing the company insolvent, may get rid of his liability by a *bonâ fide* sale before the winding up. But where after the company is manifestly and publicly declared to be insolvent, and in order to get rid of his liability, a shareholder transfers his shares to a pauper, the transaction cannot be supported, and he will be held to be a contributory. *Budd's case.* vol. 30, p. 143

25. A company being in difficulties, *A. B.*, a shareholder, twelve months before it was ordered to be wound up, transferred his shares to his farm bailiff, and the transfer was entered in the company's books. The Court, considering the transfer not *bonâ fide*, Held, first, that *A. B.* was a contributory; and secondly, that the transfer in the company's books, under "The Companies Clauses Act, 1845," did not prevent his being made a contributory. *Budd's case, Re The Electric Telegraph Company of Ireland.* vol. 30, p. 143

26. A shareholder presented a petition to wind up a company: the directors, to stifle inquiry, bought him off by taking a transfer of his shares to a nominee of their own. The company having been ordered to be wound up within two years afterwards, it was held that the transfer was not *bonâ fide*, and that such shareholder was a contributory. *Eyre's case, In re The Mitre Assurance Company.* vol. 31, p. 177

27. *A.* and others, who all stood in the same position, were placed by the Master of the Rolls on the list of contributories. *A.* appealed, and the order as to him was reversed. Held, that it was unnecessary to rehear the cases of the others, as they would, in chambers, be struck off the list. *Re The National Assurance and Investment Association, Ex parte Munday.* vol. 31, p. 206

28. Dissentient members were allowed to retire by resolutions at a general meeting, and upon terms which were assumed to be *ultra vires*. Held, that the transaction could not be questioned by the continuing shareholders after twelve years delay. *Brotherhood's case.* vol. 31, p. 365

29. An executrix, who was also residuary legatee, held not to be personally liable as contributory in respect of shares belonging to her testatrix, though she had received dividends for six years and had signed two receipts without the qualification "as executrix," and had passed her residuary account, treating the shares as part of the clear residue, it appearing that formalities required by the deed of settlement for making her a shareholder had not been complied with. *The Herefordshire Banking Company. Bulmer's case.* vol. 33, p. 435

30. *B.* applied verbally for shares in a company, and he paid the deposit to the secretary on his undertaking to return it if he did not get the shares in a few days. The shares were allotted to *B.* two days after, and an entry to that effect was made in one of the company's books, but no letter or notice of allotment or scrip certificates had ever been sent to *B.*, and there was no acceptance or further act on his part. Held, that he was a contributory. *The New Theatre Company (Limited). Bloxam's case.* vol. 33, p. 529

31. A person who takes shares in a company on the faith of material representations made by the company, which turn out to be false, may repudiate them. *Re The Life Association of England (Limited). Blake's case.* vol. 34, p. 642

32. *B.* took shares in a company on the faith of the prospectus, in which certain persons were stated to be directors, and relying on the statement of the agent of the company that the *London* share list was closed. Both these statements were false. He repudiated the shares, and the directors acquiesced therein. Held, that he was not a contributory. *Ibid.*

33. A company being in difficulties, *A. B.* gave *C. D.* 30*l.* to take a transfer of his

shares, and the transfer, which stated (falsely) that *C. D.* had paid *A. B.* 25*l.* for the shares, was duly registered. About a year afterwards, the company was ordered to be wound up. Held, that *A. B.* was not a contributory. *Re Hafod Lead Mining Company. Slater's case.*
vol. 35, p. 391

34. The prospectus of a company stated, that the capital consisted of 15,000 shares of 10*l.* each; first issue 10,000 shares. *A. B.* applied for shares, which were allotted to him. Held, that *A. B.* could not resist being put on the list of contributories, on the ground that less than 900 shares had ever been taken. *Re The English, &c. Rolling Stock Company. Lyon's case.* vol. 35, p. 646

35. Shares were allotted to *A. B.* at a meeting of three directors, and before the number necessary to form a *quorum* had been determined. Held, that *A. B.* could not, upon the company being wound up, insist that the allotment to him was invalid. *Ibid.*

36. Alteration of the articles of association of a company between an application for shares and their allotment. Held not to invalidate the allotment, such alteration being made under the authority of the "Companies Act, 1862," and the objects of the company not being thereby altered. *Ibid.*

CONVERSION.

[*See* CONVERSION OF ASSETS.]

1. A testator directed his trustees to invest his personal estate, as soon after his death as a convenient purchase could be found, in a real estate, and settle it according to certain limitations. These limitations having become exhausted before the personal estate had been invested: Held, that the heir at law of the testator was not a necessary party to a suit to have the rights to the fund declared. *Hereford* v. *Ravenhill.*
vol. 1, p. 481

2. A sum of money directed to be invested by an executrix "in land or some other securities," for the benefit of one for life, with remainder to his children, "but in failure of these, to *A.* and his heirs for ever," and which had not been invested in land, held to have been originally impressed with the character of real estate; but by the subsequent dealing therewith by the parties beneficially interested, to have acquired the quality of personalty. *Cookson* v. *Reay.*
vol. 5, p. 22

3. A testator directed his trustees, with the consent of his widow, to invest his personal estate in freehold, *leasehold*, or copyhold messuages, tenements, or hereditaments, and settle them upon certain trusts which were applicable to realty. Held, that a conversion into real estate was intended. *Hereford* v. *Ravenhill.*
vol. 5, p. 51

4. A testator gave his daughter a sum of money, and directed his executors, "as soon as convenient after his decease, to purchase an estate," and when she attained twenty-one, she was to receive the money if the land was not bought. There was a gift over. The estate was not purchased, and she invested the money in the funds. Held, on the daughter's death, that the money was impressed with the character of realty, and passed as such. *Simpson* v. *Ashworth.*
vol. 6, p. 412

5. Held, upon the construction of a will, that the real estate had not been converted out and out. *Hopkinson* v. *Ellis.*
vol. 10, p. 169

6. A testator gave his residuary real and personal estate to his wife for life, and, after her death, he gave "full power" to his executors, their heirs or assigns to collect all his property together, and sell the houses and other estates, and convert into money his funded property, and then to pay certain legacies; then the whole of his property was to be divided amongst his twelve first cousins. Held, on the context, that the real estate ought to be considered as converted into personalty. *Burrell* v. *Baskerfield.* vol. 11, p. 525

7. A testator devised his real estates to *A. B.*, in trust to sell and pay off all incumbrances thereon, and stand possessed of the residue "as part of his personal estate." He bequeathed his personal estate to the same persons, in trust to convert, and with the produce thereof and of the sales of his real estates to pay his debts, &c., and the legacies, and to pay the residue to whom he should give the same by codicil. He made no gift of the residue. Held, that of the surplus, the part arising from realty belonged to the heir, and that from the personalty to the next of kin. *Shallcross* v. *Wright.* vol. 12, p. 505

8. *A.* and *B.* had conflicting claims to a freehold estate. *A.* proposed that the estate should be sold as soon as possible, and the produce divided between them, and that until the sale, a Receiver should be appointed to divide the rents in the same proportions. This was accepted by *B.* Before the sale, which was postponed, *A.* died intestate. Held, that the property had been converted into personalty, and that *A.*'s next of kin, and not his heir, were entitled. *Hardey* v. *Hawkshaw.* vol. 12, p. 552

9. In such cases the effect of the act is to be considered, and not the intention as affecting the real and personal representatives. *Ibid.*

10. A testatrix gave her real and personal estate to three trustees, upon trust, as soon as they, in their discretion, should think most advantageous, to sell and convert into money her real estate, and pay her debts and legacies. She gave the residue of her estate and effects to her son *J. B.* Held, that *J. B.* took the residue of the realty in the character of personalty. *Griesbach* v. *Fremantle.* vol. 17, p. 314

11. *A. B.* who was one of the trustees, paid the debts and legacies, except one annuity, and remained in possession sixteen years and died intestate. Held (having regard to his acts, and notwithstanding he was both co-trustee and owner), that the property was re-converted into realty and passed to his heirs. *Ibid.*

12. Where real estate is bequeathed in the character of personalty, and it is enjoyed unconverted by the legatee, slight circumstances are sufficient to raise a presumption that he has elected to retain it as realty. In the absence of any other circumstances, the fact that a person has, for a great length of time, preserved the property in its actual state, will be sufficient to induce the Court to come to this conclusion. *Dixon* v. *Gayfere.* vol. 17, p. 433

13. *A. B.*, being entitled to an undivided share in a real estate impressed with the character of personalty, retained possession for between two and three years, and died without having said or done anything to indicate an intention to reconvert. Held, that, at his death, it was personalty. *Ibid.*

14. The owner of an estate, after having devised it to an infant, agreed, under compulsion, to sell a portion of it to a railway company. The owner having died before the completion of the purchase, without having altered his will. Held, that his executors, and not the devisee, were entitled to the purchase-money. *Re Manchester and Southport Railway.* vol. 19, p. 365

15. Two persons seised of freeholds agreed to carry on business in partnership upon the premises for fourteen years, and that if either died during that term the survivor should purchase the freeholds at a stated price. The fourteen years having expired, they, by parol agreement, continued the partnership "on the old terms." One afterwards died intestate. Held, that the stipulation as to purchase was binding, and that the freeholds were converted into personal estate, and did not pass to the heir. *Essex* v. *Essex.* vol. 20, p. 442

16. Subject to the debts, &c., real estates were devised to *A.* They were all sold in an administration suit, to which the devisee was a party. After payment of the debts, &c. there remained a sum in Court at the death of the devisee. Held, that it was of the character of real estate, and passed to her heir. *Cooke* v. *Dealey,* vol. 22, p. 196

17. *A. B.* was entitled to two-thirds of an estate directed to be converted into personalty. Held, that it had not been *re-converted* into realty by acts of *A. B.* done independently of the person entitled to the other one-third. *Holloway* v. *Radcliffe.* vol. 23, p. 163
See *Meredith* v. *Vick.* vol. 23, p. 559

18. A testator empowered his trustees to sell his real estate, and directed it, "for the purpose of distribution," to be considered personal estate. He then gave it and his personal estate to certain persons, with an ultimate limitation to "his own right heirs and next of kin, according to the respective natures and qualities thereof." The prior limitations having failed, held, that there was no absolute conversion, but that the heir at law took the produce of the realty. *Edwards* v. *Tuck.* vol. 23, p. 268

19. Where a testator directs a sale of his real estate for purposes which wholly fail, the heir takes it as realty; but if the failure be only partial, he takes it as personalty. *Bagster* v. *Fackerell.* vol. 26, p. 469

20. A testator devised real estates to trustees, in trust to sell and invest, and pay the dividends to his wife for life, and at her death to transfer the principal to a charity. The gift to the charity being void, held that there was a complete conversion of the realty into personalty, and that (subject to the life estate) the heir of the testator took the produce in the character of personalty, and that, on the heir's death intestate, it passed to his legal personal representatives, and not to his heir-at-law. *Wilson* v. *Coles.* vol. 28, p. 215

21. A testator devised his real and personal estate to trustees, upon trust "to divide and distribute" it equally between *A*, *B.* and *C.* And he authorized his trustees to sell all or any part of his property, as they should think best, for the purpose of dividing the same. Held, that, in the absence of the exercise of the power, the will did not convert the real estate into personalty. *Lucas* v. *Brandreth.* (No. 1.) vol. 28, p. 273

22. When an heir-at-law seeks to have a contract, entered into by his ancestor, carried into effect for his benefit, he must shew that there was a binding contract at the death of the ancestor, and one which could be enforced against an unwilling purchaser. *Garnett* v. *Acton.* vol. 28, p. 333

23. A testator gave to his children, in suc-

cession, the option of purchasing his real estate, and in the meanwhile the rents were to be divided equally between them. Before an option had been exercised, and while some of the children were still infants, a corporation purchased part of the property for public improvements under compulsory parliamentary powers. Held, that the shares of children who had died infants remained real estate, until the option had been exercised, and that in the meanwhile, the income of the purchase-money belonged to their heir-at-law. *The City of London Improvement Act, Ex parte Hardy.* vol. 30, p. 206

24. Commissioners having compulsory powers to purchase lands gave notice to owner of freeholds of taking them, and to treat. He, in reply, stated the price he was willing to take, but he died before the acceptance of the offer. The purchase was afterwards completed at that price. Held, that the real estate had not been converted into personalty at the death of the owner, and that the purchase-money belonged to his heir-at-law. *Re Battersea Park Acts.* vol. 32, p. 591

25. Freeholds in which a lunatic was interested were taken compulsorily by a company, and the purchase-moneys, which, under the act of parliament, were liable to be invested in land, was paid into Court and laid out in the government funds. The existence of the fund was overlooked, and it went on accumulating. *A. B.*, who became tenant in tail in possession, with immediate remainder to her in fee, by her will, devised her real estate and bequeathed "all such capital stock and moneys as she should be possessed of or interested in at her death in the public, government or parliamentary funds," but she expressed no further intention as to conversion. Held, that the principal fund passed as real estate and the accumulations as personal estate. *Dixie* v. *Wright.* vol. 32, p. 662.

26. A real estate was devised to two trustees to sell and divide the produce between *A.*, *B.* and *C.* The trustees being dead, *A.* entered into possession and received the rents for three-and-a-half years, accounting to *B.* and *C.* for their shares. *A.* then died, and at his death the estate remained unsold. Held, that there had been no reconversion, but that the estate in equity, retained its character of personalty. *Brown* v. *Brown.* vol. 33, p. 399

27. A testator gave his real and personal estate to trustees, in trust to raise an annuity for his widow, and invest the surplus, and after her death, he directed a sale of his real estate, and declared that the produce "should be deemed to be part of his personal estate, and should be subject to the disposition" of his personal estate, which he gave to his children. Held, that the realty was converted into personalty only for the purposes of the will, and that the heir of the testator was entitled to so much of the real estate as had lapsed by the death of a child in the testator's lifetime. *Bedford* v. *Bedford.* vol. 35, p. 584

CONVERSION OF ASSETS.

[*See* DEVASTAVIT, PERISHABLE PROPERTY, LIFE TENANT AND REMAINDERMAN.]

1. A receiver had been appointed of the testator's estate, part of which was in *India*, and it having become necessary to have it remitted, Held, that the proper course was to refer it to the Master, to inquire what would be the most advantageous course for receiving and remitting it to *England*. *Keys* v. *Keys.* vol. 1, p. 425

2. Part of a testator's assets consisted of a promissory note. The executor, though requested by the parties interested so to do, neglected to get it in; and about two years afterwards it was lost by the insolvency of the debtor. Held, that the executor was personally liable. *Caney* v. *Bond.* vol. 6, p. 486

3. Liability of executors who were directed to buy an estate within twelve months, which, though able, they neglected to do, whereby the trust thereof failed, *quære*. *Upjohn* v. *Upjohn.* vol. 7, p. 59

4. Executors directed to convert and invest the testator's property, allowed it to be enjoyed in specie by the tenant for life. Three years after her death they accounted for the value, and paid it into Court. Held, that they ought to pay interest from the death of the tenant for life to the day of such payment. *Mackenzie* v. *Taylor.* vol. 7, p. 467

5. The Master of the Rolls (following *Dimes* v. *Scott*, 4 *Russ.* 195; *Taylor* v. *Clark*, 1 *Hare*, 161; and *Sutherland* v. *Cooke*, 1 *Colly.* 503; in opposition to *Douglas* v. *Congreve*, 1 *Keen*, 410, and other cases), held, that a tenant for life of a residue was entitled, during the first year, to the dividends on so much 3 per cents. as would have been produced by the conversion of the property at the end of that year. *Morgan* v. *Morgan.* vol. 14, p. 72

6. Executors were ordered to sell canal shares before the 14th of *July*, 1833. They did not sell them until 1836, and a great loss occurred. Held, that they were personally liable for the loss. *Davenport* v. *Stafford.* vol. 14, p. 319

7. Where executors have neglected to realize assets, which are outstanding upon an improper investment, there is no fixed

period at which the loss is to be calculated. It depends on the particular nature of the property and the evidence affecting it. *Hughes* v. *Empson.* vol. 22, p. 181

8. Losses occurred by the non-sale of *Crystal Palace* shares, which were at a premium at the testator's death, but subsequently fell to a discount. The executors were charged by the certificate with the value at the end of two months, but the Court varied the certificate, to twelve months. *Ibid.*
9. By a marriage settlement, a debt due from *A.* was assigned to *A.* and *B.*, upon trust, "with all convenient speed," to get in and invest in Consols. For two-and-a-half years *B.* took no steps to get in the money, and *A.* then became bankrupt. Held, that *B.* was responsible for the loss. *Grove* v. *Price.* vol. 26, p. 103
10. A testator died in 1834, having directed his executors and trustees, "so soon as convenient after his decease, to sell" his freehold inn. They attempted to sell in 1836, and were offered 900*l.*, which they refused. The property became greatly depreciated by a railway opened in 1843, and it still remained unsold in 1859. Held, that the trustees were liable for the difference between 900*l.* and the produce of a present sale. *Fry* v. *Fry.* vol. 27, p. 144
11. Executors must be allowed a reasonable time for breaking up a testator's domestic establishment and discharging his servants. Two months held not to be an unreasonable delay, having regard to the circumstances. *Field* v. *Peckett.* (No. 3.) vol. 29, p. 576

CONVEYANCE.

[*See* VENDOR AND PURCHASER (CONVEYANCE).]

1. The Plaintiff by one contract purchased an estate and a judgment for 1,000*l.* Held, that he was entitled to apportion the purchase-money between the estate and the judgment, and to have separate conveyances of each. *Clark* v. *May.* vol. 16, p. 273
2. An estate was sold in a suit to raise a charge which was paramount to some annuities subsequently charged on the estate. The annuitants, who were parties to the suit, impeached the validity of a re-settlement of the estate, intermediate between the charge and the annuities. The conveyance to the purchaser proceeded, in some measure, on the re-settlement. Held, that the annuitants were necessary parties to the conveyance, and were bound to join in it, but without prejudice to any rights they might have against the purchase-money, in case they should be able to impeach the validity of the re-settlement. *Sullivan* v. *Sullivan.* vol. 28, p. 102

CO-PLAINTIFFS.

1. One of two Co-plaintiffs, who had authorized the institution of a suit, refused to proceed therein. The other Plaintiff obtained, on motion, an order to amend by making him a Defendant, and to pay the costs. *Brown* v. *Sawer.* vol. 3, p. 598
2. Parties in the same interest with the Plaintiff, not joining as Co-plaintiffs, are not entitled to the costs of a suit, which as to their interests is successful. *England* v. *Downs.* vol. 6, p. 279
3. Co-plaintiffs must act together, and cannot take inconsistent proceedings. *Wedderburn* v. *Wedderburn.* vol. 17, p. 158

COPY.

[*See* ABSTRACT, OFFICE COPY.]

COPYHOLDS.

1. Independently of the 4 & 5 *Vict.* c. 35, s. 85, this Court has no jurisdiction to direct the partition of copyholds, nor of customary freeholds. *Jope* v. *Morshead.* vol. 6, p. 213
Dillon v. *Coppin.* vol. 6, p. 217, n.
2. *A.* mortgaged copyholds to *B.* by a deposit of a copy of his admission. *A.* died, and his heir mortgaged them to *C.* by deposit of a copy of his own admission. *C.* afterwards sold and conveyed the estate to *D.* *D.* had notice of *B.*'s security. Held, that it was unnecessary to determine whether *C.* took with notice of *B.*'s incumbrance, as by the deposit he could take only such interest as the heir could give, namely, his interest subject to the equitable charge of the ancestor; and secondly, that the conveyance to *D.* was void as against *B.* *Tylee* v. *Webb.* vol. 6, p. 552
3. A copyhold was devised to *A.* for life, with power afterwards to the executors to sell. *A.* was admitted, and after her death the executors sold to *B.* *B.*, before admittance, devised the copyholds. He was afterwards admitted, and died without republishing his will. Held, that (under the old law) *B.* at the date of his will had an equitable and devisable interest, and not an inchoate legal right; and secondly, that the devise was not revoked by his subsequent admittance. *Seaman* v. *Woods.* vol. 24, p. 372
4. By agreement between the lord and the copyholders, waste lands of the manor were enclosed and allotted. Held, that the allotments taken by the copyholders were of freehold tenure. *Payne* v. *Ryder.* vol. 24, p. 151

5. The vendor of a copyhold estate enfranchised under "The Copyhold Act, 1852," is not bound to shew the lord's title. *Kerr* v. *Pawson.* vol. 25, p. 394

6. After the passing of "The Copyhold Act, 1841," and "The Copyhold Act, 1852," but before "The Copyhold Act, 1858," an agreement was entered into for the sale of a copyhold estate, together with the timber "and all appurtenances to the same hereditaments belonging," as soon as the same should become freehold, under an agreement of the vendor to use his best endeavours to enfranchise. An enfranchisement was effected under the second act, reserving the minerals to the lord. Held, that the contract had reference to the provisions in those acts relative to minerals, &c., and that the purchaser must complete notwithstanding this reservation. *Ibid.*

7. A custom of a copyhold manor to grant the demesne lands by copy for lives is destroyed by the grant by the owner in fee of a lease from year to year as to such lands, and they will thereby become severed from the manor, and thenceforth cease to be part of the demesne. But such a grant, by a person having a limited interest, as by a lord farmer, has that operation only during the continuance of his estate. The creation of a tenancy at will will not affect such a severance, and therefore where a lord farmer created a tenancy from year to year, without the concurrence of his mortgagee, it was held that, as against the mortgagee, the tenant held only at will, and that therefore no severance had thereby been created. *Ex parte Lord Henley, Re The London and South-Western Railway Act*, 1856. vol. 29, p. 311

8. A deed to bar an equitable estate tail of copyholds must be entered on the court rolls of the manor within six months after the execution thereof, or otherwise it will have no operation under the 3 & 4 *Will.* 4, c. 74. *Honywood* v. *Foster.* (No. 1.) vol. 30, p. 1

9. *Quasi* contingent remainders of copyhold hereditaments held protected from destruction by the estate of the lord. *Pickersgill* v. *Grey.* vol. 30, p. 352

10. Whether two fines were payable to the lord on the admission of the new trustee *quære*, but *semble* not. *Paterson* v. *Paterson.* vol. 35, p. 506

COPYRIGHT.

[*See* COPYRIGHT OF DESIGN.]

1. A work consisting partly of compilations and selections from former works and partly of original compositions may be the subject of copyright.

The Defendant having published a book consisting of matter pirated from the Plaintiffs' work, intermixed with original matter, the Court, without waiting till the whole of the pirated parts could be ascertained, enjoined the Defendant from publishing his book containing any articles pirated from the Plaintiffs' work. *Lewis* v. *Fullarton.* vol. 2, p. 6

2. The Defendant was one of the proprietors and the editor of a weekly periodical, called *Household Words*. Held, on a dissolution of the partnership, that he was not justified in advertising that the publication would be discontinued; for that the right to use the name must be sold for the benefit of all the partners, it being part of the partnership assets. But held, that he might advertise the discontinuance of the publication as regarded himself. *Bradbury* v. *Dickens.* vol. 27, p. 53

COPYRIGHT OF DESIGN.

1. Distinction between the two acts relating to the copyright of design (5 & 6 *Vict.* c. 100, and the 6 & 7 *Vict.* c. 75). The first applies to new designs for the ornamentation of articles, the second to new designs of articles of utility. *Windover* v. *Smith.* vol. 32, p. 200

2. A design of a carriage was registered under the 6 & 7 *Vict.* c. 75. The inventor claimed four things as new, and as conducive to the "utility" of the design. There was no novelty as to three of them, and they did not contribute to the "utility." The fourth tended to its utility, but was the mere extension of a well-known principle. Held, that the claim to monopoly could not be supported under the above act, and that the design was not protected under the former act (5 & 6 *Vict.* c. 100), as an ornamental design, it not having been registered under that act. *Ibid.*

CORPORATION.

1. The new corporations succeed to the debts and duties of the old corporations, whose place they now occupy, as well as to their estates, property, and rights, and when the new corporation was made party to a suit in respect of a breach of trust committed by their predecessors, it was held that they were not entitled to costs. *Attorney-General* v. *Kerr.* vol. 2, p. 420

2. Generally, a charitable gift must be accepted according to the declared intention of the giver; but a corporation not being bound to accept an accession to its foundation, may consent to receive it with qualifications, which may be collected either from documents, or con-

stant usage adopted at the time and persevered in downwards. *The Attorney-General* v. *The Drapers' Company.* vol. 6, p. 382

3. Liability of the new municipal corporations and the ratepayers of their boroughs for the breaches of trust of the old corporations, and the costs of obtaining redress. *The Attorney-General* v. *The Corporation of Leicester.* vol. 9, p. 546

4. The borough fund created under the Municipal Corporation Act (5 & 6 *Will.* 4, c. 76) is a trust fund, and this Court has authority and jurisdiction to compel the parties who receive and apply the fund to account for the sums they receive, and the application of them. *The Attorney-General* v. *The Corporation of Lichfield.* vol. 11, p. 120

5. Difficulties in dealing with the assurances of a *quasi* corporate body liable to fluctuations as to its members. *The Manchester, Sheffield, &c. Railway Company* v. *The Worksop Board of Health.* vol. 23, p. 198

6. *Primâ facie* a municipal corporation has full power to dispose of all its property, like a private individual, and it lies on the person alleging the contrary to establish a trust. *Evan* v. *The Corporation of Avon.* vol. 29, p. 144

7. The Municipal Corporation Act (5 & 6 *Will.* 4, c. 76) enables the town council of boroughs mentioned in the schedule to call in question any collusive alienation of the corporate property prior to the 6th *June*, 1835. The subsequent act (1 *Vict.* c. 78, s. 49) enables the Crown to grant charters to other towns, extending to them "all the powers and provisions" of the Municipal Corporation Act. The Crown having granted such a charter in 1861. Held, that all the clauses of the first act were applicable, and that the right of questioning collusive alienation could be carried back to the date of the charter, but not further. *Attorney-General* v. *Corporation of Avon otherwise Aberavon.* vol. 33, p. 67

CORPUS AND INCOME.

[*See* INCOME, TENANT FOR LIFE AND REMAINDERMAN.]

COST BOOK.

1 In the absence of express stipulation, the shares of a co-adventurer in a mining concern, conducted on the cost-book system, cannot be forfeited for nonpayment of the calls. *Hart* v. *Clarke.* vol. 19, p. 349

2. The lease of a mine was taken by three persons, who agreed to work it on the cost-book system. The Plaintiff, one of them, made default in paying his calls, and thereupon the others purported to forfeit his shares, and they dissolved the partnership, and the mining operations were thenceforward prosecuted without any contribution or assistance from the Plaintiff. About a year after, there being rumours of success, the Plaintiff claimed to be a partner, and three-and-a-quarter years after the exclusion he filed a bill to obtain a share of the property. The forfeiture being held ineffectual, but the dissolution valid, the Master of the Rolls was of opinion, that, having regard to the speculative nature of mining operations, the Plaintiff was not entitled to a share of the profits as a continuing partner, but only to his share of the assets at the dissolution, and to the profits subsequently attributable to its employment in the concern. The Lords Justices took a different view of the Plaintiff's rights. *Hart* v. *Clarke.* vol. 19, p. 349

3. Observations as to partnerships conducted on the cost-book principle. *In re The Bodmin United Mines Company.* vol. 23, p. 370

4. The Court does not, without evidence, take judicial cognizance of the meaning of the term "cost-book principle." *Ibid.*

5. In a company conducted on the "cost-book principle," shareholders in arrear were, by a general meeting, allowed to surrender their shares without discharging such arrears. The Court, from the practice of the company in other cases, inferred that this was authorized, and held, that the shares having been legally surrendered, the surrenderors were not contributories. *Ibid.*

COSTS.

[*See* CHAMBERS, CHARITY (COSTS), COSTS OF ADMINISTRATION, COSTS OF VEXATIOUS PROCEEDINGS, DISCLAIMER, HEIR AT LAW, ISSUE AT LAW, LANDS CLAUSES ACT (COSTS), MORTGAGOR AND MORTGAGEE (COSTS), PARTITION SUIT (COSTS), PARTNERSHIP SUIT (COSTS), PETITION (COSTS), REHEARING, SCALE OF COSTS, SECURITY FOR COSTS, SEVERING IN DEFENCE, SOLICITORS' COSTS, SPECIAL CASE (COSTS), SPECIFIC PERFORMANCE (COSTS), TAXATION, TRUSTEES (COSTS), TRUSTEE RELIEF ACT (COSTS), VENDOR AND PURCHASER (COSTS), WINDING-UP, WITNESS.]

1. A suit was instituted for administration and to charge the executor with interest. The decree directed taxation of the costs of so much of the suit as sought to

charge interest. Held, that this comprised also an *apportionment* of the general costs of the suit. *Heighington* v. *Grant.* vol. 1, p. 228

2. Defendants admitted by their answer, that all persons interested were parties to the suit, and at the hearing objected for want of parties, and the objection prevailed. Held, that having misled the Plaintiff, they ought to pay him the costs of the day. *Price* v. *Berrington.* vol. 2, p. 285

3. Where a notice of motion embraces two objects, and the principal one fails, the party moving must pay the costs of the motion. *Sturch* v. *Young.* vol. 5, p. 557

4. In a suit to obtain the decision of the Court on a very doubtful will, the Plaintiff turned out to have no interest. The Court, upon making a declaration of the rights, ordered the costs of all parties out of the fund. *Thomason* v. *Moses.* vol. 5, p. 77

5. A vendor filed a bill for specific performance, alleging that the Defendant had accepted the title; the Defendant resisted it on the ground that the bankruptcy under which the Plaintiff claimed was invalid. Neither allegation turned out correct, and though a good title was first shewn in the Master's office, the decree was made without costs. *Sidebotham* v. *Barrington.* vol. 5, p. 261

6. A sole Plaintiff, whose interest failed pending a reference to take the accounts, was restrained from proceeding further in the suit, and had no costs of suit. *Ibid.*

7. An application was made, after answer, for an injunction to stay proceedings at law, and was refused. The Plaintiff was ordered to pay the costs. *Barwell* v. *Barwell.* vol. 5, p. 373

8. A purchaser under a decree, to whom a good title could not be made, discharged from his purchase, with his costs, charges, and expenses, including the costs of his petition to be discharged. *Calvert* v. *Godfrey.* vol. 6, p. 97

9. A demurrer for want of equity and want of parties, succeeded only on the latter ground. No costs were given. *Allan* v. *Houlden.* vol. 6, p. 148
(See *Benson* v. *Hadfield.* vol. 5, p. 546)

10. A bill for the delivery up of securities on which the Defendant had commenced proceedings at law, was taken *pro confesso.* Held, that the Plaintiff was entitled to the costs at law, though the bill did not specifically pray for them. *Stanley* v. *Bond.* vol. 6, p. 423

11. The Plaintiffs stating themselves and some of the Defendants to be next-of-kin, filed a bill for the administration of a testator's estate. Their claim was displaced upon inquiries directed by the Court, and other persons, not parties to the cause, established their right, and became entitled to a large residue. The case being one of great difficulty and doubt, and an investigation being absolutely necessary for the administration of the estate, the Plaintiffs and Defendants were allowed their costs out of the fund. *Johnston* v. *Todd.* vol. 8, p. 489
(See *Wedgwood* v. *Adams.* vol. 8, p. 103
Merlin v. *Blagrave.* vol. 25, p. 125)

12. An order for rehearing was discharged with costs, but in the meantime the cause had been set down and briefs delivered. Held, that the costs thereof could not be included in the order, and could only be given on a rehearing or upon special application. *Davenport* v. *Stafford.* vol. 9, p. 106

13. A petition to review a taxation was successful, but the petitioner, not having taken proper steps to satisfy the Taxing Master, when the matter was in his office was ordered to pay the costs. *Sturge* v. *Dimsdale.* vol. 9, p. 170

14. According to the modern practice, the Court, though it retains a discretion, generally acts on the rule, that, *primâ facie*, the unsuccessful party is to be charged with the costs of the suit, and, in the present case, it gave costs against an unsuccessful Plaintiff, though the case was one of great difficulty arising out of a will and dependent on foreign law. *Earl Nelson* v. *Lord Bridport.* vol. 10, p. 305

15. Where, under the circumstances of the case, an unsuccessful Plaintiff is to be charged with the costs of suit, the result is not altered by the additional fact, that the institution of the suit was recommended by the Master. *Ibid.*

16. A solicitor acted for both parties in the matter of a voluntary settlement, which was set aside for undue influence. He was made a Defendant to the suit for that purpose. The Court, though exonerating him from culpability in the matter, made him bear his own costs, because he had not acted with proper prudence in the matter. *Harvey* v. *Mount.* vol. 8, p. 439
(See *Ex parte Colton.* vol. 9, p. 107)

17. On a fair question upon which there has been *no decision*, the parties, in point of costs, are entitled to indulgence. *Watts* v. *Penny.* vol. 11, p. 435

18. Costs of a motion may be given, though not asked for, by the notice of motion. *Clark* v. *Jaques.* vol. 11, p. 623
(See *Merlin* v. *Blagrave.* vol. 25, p. 125)

19. A petition was presented to wind up an incorporated railway company, but before it had been heard, an act passed, exempting such companies. No costs were given on dismissing the petition. *In re The Direct London and Portsmouth Railway Company.* vol. 12, p. 269

20. Parties compromised the subject-mat-

ter of the suit, without providing for the costs. Held, that the cause could not be afterwards heard, for the purpose of determining the costs alone, and it was struck out of the paper. *Whalley* v. *Lord Suffield*. vol. 12, p. 402
(See *Sivell* v. *Abraham*. vol. 8, p. 598)
21. By an interlocutory order, the Defendant was ordered to pay the Plaintiff certain costs. The Defendant kept out of the way, and the Plaintiff, being unable to obtain payment, presented a petition for payment thereof out of rents in Court. It was a question in the cause, whether they belonged to the Plaintiff or Defendant. The Court held, that it could make no such order. *Hargrave* v. *Hargrave*. vol. 13, p. 102
22. Refusal to refer to arbitration in pursuance of an agreement is not of itself a sufficient reason for refusing costs to a successful party. *Lees* v. *Laforest*. vol. 14, p. 250
23. Of the two objects of a bill, one succeeded and the other failed. The costs not being easily separated, a decree was made without costs on either side. *Rochdale Canal Company* v. *King*. vol. 16, p. 630
24. On reforming a lease no costs were given to the Plaintiff, lessor, because the suit had been occasioned by his error in not having the lease properly prepared. *Murray* v. *Parker*. vol. 19, p. 305
25. The Plaintiffs were ordered to pay to the Defendant so much of the costs "as had been occasioned" by one object of the suit, and a decree was made with costs as to the other objects. The Taxing Master considered the suit to be for two objects, and allowed the Plaintiff one-half only of the general costs common to both. Held, that he was right. *Hardy* v. *Hull*. vol. 17, p. 355
26. Pending a foreclosure suit, the mortgagee was fully paid. He, however, made further claims and brought the cause to a hearing. His claims appearing unfounded, he was ordered to pay all the subsequent costs. *Gregg* v. *Slater*. vol. 22, p. 314
27. In a bill for *an account*, the costs were given to the Plaintiff, although a balance of 2,000*l*. was found due from him to the Defendant, the Plaintiff having succeeded in the substantial matters of litigation. *May* v. *Biggenden*. vol. 24, p. 207
28. The costs of Defendants dismissed pending the suit, on their being ascertained to be purchasers for value without notice, were ordered, at the hearing, to be paid by the principal Defendants. *Hughes* v. *Howard*. vol. 25, p. 575
29. Where a bill to set aside a purchase by a solicitor from his client is dismissed on the ground of lapse of time, the Court gives the solicitor no costs, unless he proves the fairness of the transaction. *The Marquis of Clanricarde* v. *Henning*. vol. 30, p. 175
30. Where costs are ordered to be paid out of a particular fund, that does not determine that that fund is ultimately to bear them. *Sheppard* v. *Sheppard*. vol. 33, p. 129
31. The heir-at-law of a vendor who refused to convey to the purchaser an estate sold by his ancestor, was ordered to pay the costs of a suit to compel him. *Hoddel* v. *Pugh*. vol. 33, p. 489
32. A Plaintiff who was only entitled to an injunction and costs, insisted also on an account. The Defendant offered to submit to the injunction without costs. The Plaintiff having brought his cause to a hearing, the Court held both parties in the wrong, and gave no costs to either side. *Moet* v. *Couston*. vol. 33, p. 578
33. The expression "costs following the event" refers to an event produced by the decision of the Court, and not to one arising from a compromise between the parties. *Straker* v. *Ewing*. vol. 34, p. 147

COSTS OF ADMINISTRATION.

[*See* MORTGAGOR AND MORTGAGEE (COSTS), ORDER OF ASSETS.]

1. In a creditor's suit, the assets being sufficient to pay the debts, but being insufficient to pay the debts and the costs of suit taxed as between party and party: the Court ordered the Plaintiff's extra costs, as between solicitor and client, to be paid out of the fund. *Sutton* v. *Doggett*. vol. 3, p. 9
(See *Cross* v. *Kennington*. vol. 11, p. 89)
2. Pending a litigation in the Ecclesiastical Court, as to the validity of a will, a creditor filed a bill for a receiver, &c. The alleged will being held invalid, an administrator was appointed; whereupon another creditor filed a cross suit, and rapidly obtained a decree. The Plaintiff in the first suit was declared entitled to his costs out of the estate. *Frowd* v. *Baker*. vol. 4, p. 76
3. The costs of a suit for administration, held, there being no other assets, to be payable out of the specific legacies *pari passu*. *Bristow* v. *Bristow*. vol. 5, p. 289
4. Costs of an administration suit directed to be paid rateably out of the real and personal estate. *Bunnett* v. *Foster*. vol. 7, p. 540
(*Johnston* v. *Todd*. vol. 8, p. 489
Hopkinson v. *Ellis*. vol. 10, p. 169)
5. A party was unable to obtain payment of his legacy and his portion of the re-

sidue without suit. The case being clear, and the remaining portion of the residue having been paid by the executor, Defendant was charged with costs. *Curtis* v. *Robinson.* vol. 8, p. 242

6. An estate was represented to a legatee by the personal representatives as barely sufficient to pay the debts, but the accounts were not shewn. A bill was filed, and afterwards an offer was made to produce the accounts, which was declined. Ultimately, a small surplus was ascertained to exist, and to be due from the representatives, but which was totally insufficient to pay the legacies, which were of a very considerable amount. The Court disapproved of the litigation, and gave the Plaintiff no costs; but directed the representatives to retain their balance in discharge of their costs. *Ottley* v. *Gilby.* vol. 8, p. 602

7. The representative of a defaulting executor, fairly accounting, is entitled to deduct his costs of suit out of the assets, though they may be insufficient to repair the breach of trust. *Haldenby* v. *Spofforth.* vol. 9, p. 195

8. An executor was allowed, under the circumstances, the costs of a cross cause for administration of the estate instituted by him against his *cestui que trust*. *Nelson* v. *Duncombe*. *Duncombe* v. *Nelson.* vol. 9, p. 211

9. Where the fund is deficient, the executors' costs of an administration suit are paid thereout in priority of those of the other parties. *Tanner* v. *Dancey.* vol. 9, p. 339

10. In a creditors' suit, a defaulting administrator and his assignees appointed *pendente lite*, held not entitled to any costs. *Carr* v. *Henderson.* vol. 11, p. 415

11. In a simple administration suit, the costs of all necessary parties are payable out of the estate. But where some of the residuary legatees have assigned or incumbered their share, they and their assignees are entitled to one set of costs only, namely, the costs of the assignors: and as between the assignors and assignees, the assignees are entitled to receive such costs in discharge of their own costs of suit, and to have the deficiency (if any) out of the share of their assignors. *Greedy* v. *Lavender.* vol. 11, p. 417

12. Real estates were devised in trust to raise a legacy for a class of next-of-kin. The legacy was raised and carried to a separate account in the suit, and afterwards costs were incurred in ascertaining the class in the Master's office. Upon petition of the legatees, such costs were held to be a charge on the estate, and were ordered to be raised. *Dugdale* v. *Dugdale.* vol. 12, p. 247

13. The mere fact that an executor neglected to render accounts when asked, is not of itself sufficient to make him liable to the costs of a suit for administering the estate. *White* v. *Jackson.* vol. 15, p. 191

(See *Low* v. *Carter.* vol. 1, p. 426)

14. Costs of an administration suit given to an executor though charged with the consequences of an improper investment. *Knott* v. *Cottee.* vol. 16, p. 77

15. There being no residuary gift, the next-of-kin filed a bill for administration. The debts exhausted the residue, but there remained assets specifically bequeathed. Held, that the Plaintiff must bear his own costs, but that the executor was entitled to his costs out of the specific legacies. *Newbegin* v. *Bell.* vol. 23, p. 386

16. An administrator settled with three out of four next-of-kin, and the fourth having instituted a suit for administration: Held, that his share only was liable to one-fourth of the costs. *Holgate* v. *Haworth.* vol. 17, p. 259

17. As to what expenses relating to real estate are properly payable out of a fund set apart to pay, amongst other things, the "expenses of executing the trusts of the will." *Lord Brougham* v. *Lord W. Poulett.* vol. 18, p. 119

18. Executors and trustees having appropriated a legacy, and divided the residue. Held, that the costs of a suit to secure the particular legacy must be paid thereout. *Governesses' Benevolent Institution* v. *Rusbridger.* vol. 18, p. 467

19. A stock legacy, bequeathed to several in succession, was appropriated by the executors, and the residue paid over. In a suit between the remainderman and the executors alone, the legacy was transferred into Court, and the costs of suit were paid thereout. The tenant for life afterwards filed a claim to have the amount of costs recouped out of the residue. It was dismissed with costs. *Richardson* v. *Rusbridger.* vol. 20, p. 136

19a. Where there is a deficiency of the assets, the costs of creditors of proving their debts are not payable in the first instance, but are added to the debts and apportioned with them. *Mershead* v. *Reynolds.* vol. 21, p. 638

20. Trust moneys were lent on mortgage to the tenant for life. On his death a suit was instituted mainly for the administration of his estate and also the realization of the mortgage, and involving the execution of the trusts of the settlement. Held, that the costs ought to be paid as of an administration suit out of the assets; but that the costs, so far as they had been increased by its being a suit for the execution of the trusts of the settlement, must be borne by the settlement fund. *Irby* v. *Irby.* vol. 24, p. 525

21. A bill was filed for the administration

of the real and personal estate. A part of the real estate was specifically devised, and gave rise to questions of construction; other part was devised to charities, which devise was void under the Statute of Mortmain. The residuary real estate descended on the heir, and the residuary personal estate was undisposed of, and went to the next-of-kin. Held, that the costs of suit attributable to the administration of the trust of the real estate were payable out of the descended estates, and that those relating to the execution of the trusts of the personal estate out of the residuary personal estate. *Sanders* v. *Miller*. vol. 25, p. 154

22. The usual accounts of personal estate not specifically bequeathed had been directed in an administration suit. Ultimately, the costs of all parties, as between solicitor and client, were paid out of a specific legacy in the absence of the specific legatee. In a subsequent suit instituted by the specific legatee for her legacy, liberty was given to her to surcharge and falsify the accounts, and the Plaintiff's costs were directed to be allowed as between party and party. *Walrond* v. *Walrond*. vol. 29, p. 586

23. A bill was filed by an administrator against the solicitor of the intestate, who claimed a mortgage on his estate, and against others, for administration and to ascertain the mortgage. The solicitor claimed 1,492*l*., but his mortgage debt was ascertained to be 924*l*. only. The assets consisted nearly wholly of the produce of the mortgaged estate. Held, that the costs of the suit were first payable out of that fund. *White* v. *Gudgeon*. vol. 30, p. 545

24. An executor, *C. D.*, died indebted to the estate of his testator *A. B.*, and a suit was afterwards instituted by the administrator *de bonis non* of *A. B.* against the representatives of *C. D.* to administer his estate and to ascertain and recover the amount due to the estate of *A. B.* Held, that the costs must fall on the estate of *C. D.* *Hyatt* v. *Hyatt*. vol. 30, p. 630

25. An estate was devised for sale and a portion undisposed of descended on the heir. Held, that the costs of a suit to administer the real estate fell on the devisees and heir *pari passu*. *Maddison* v. *Pye*. vol. 32, p. 658

26. In a bill by a legatee for the administration of an estate, it was probable that the assets would not even be sufficient to pay the costs. Held, that the costs were payable in the following order: first, the costs of the legal personal representative as between solicitor and client; secondly, the costs and expenses of the Plaintiff in selling and getting in the estate, and the costs of the heir in executing deeds; and thirdly, the other costs of all parties as between party and party *pari passu*. *Watenhall* v. *Dennis*. vol. 33, p. 285

27. An action by a creditor, whose debt was disputed, being stayed after a decree for the administration of the intestate's estate. Held, that the creditor was not entitled to his costs of the action nor of the motion to stay it until he had first established his debt in chambers. *King* v. *King*. vol. 34, p. 10

28. The costs of a special case, to obtain the opinion of the Court on the true construction of a will, held not to be "testamentary expenses." *Gilbertson* v. *Gilbertson*. vol. 34, p. 354

29. An executor may be deprived of his costs of suit upon a decree made on an administration summons, and without a bill charging him with misconduct. *Re King; Gilbert* v. *Lee*. vol. 34, p. 574

30. Executors who had neglected to produce their accounts deprived of their costs of suit up to the hearing. *Gresham* v. *Price*. vol. 35, p. 47

COSTS OF VEXATIOUS AND UNNECESSARY PROCEEDINGS.

[*See* PETITION (COSTS).]

1. A Plaintiff who enters into evidence to prove facts clearly admitted by the answer, must pay the costs, though he succeed in the suit. *Booth* v. *Booth*. vol. 1, p. 130

2. Trustees, Plaintiffs, held entitled to their costs of an unnecessary suit on the ground that full and accurate information had not been tendered them before bill filed. *Holford* v. *Phipps*. vol. 3, p. 434

3. Solicitors against whom charges of fraud had been made which were unsubstantiated, and against whom the bill was dismissed, held not entitled to their costs, on the ground that by the position in which they had placed themselves they had exposed themselves to an investigation which had not unreasonably been instituted. *Fyler* v. *Fyler*. vol. 3, p. 550

4. The point in dispute was, whether a mortgagee was entitled to six years' or twenty years' arrears of interest. The Defendant, the mortgagor, was willing before suit to pay the principal and six years' interest, but made no tender. At the hearing the mortgagor succeeded on the point of interest. Held, that as there had been no tender, the mortgagor must pay the costs. *Hodges* v. *The Croydon Canal Company*. vol. 3, p. 86

5. Where a Plaintiff, by amendment, abandons a part of his claim, and it appears he has in that respect acted vexatiously, the Court, on motion, will direct him to pay the costs thereby occasioned. *Strickland* v. *Strickland*. vol. 3, p. 242

6. A Plaintiff having filed two bills, in

which his claims were inconsistent, abandoned part of the relief originally asked: Held, that he had acted vexatiously, and he was ordered to pay the additional costs incurred by the abandoned claim. *Strickland* v. *Strickland.* vol. 3, p. 242

7. Bill dismissed without costs, on the ground of the Defendant not having (in a simple case) raised his defence by plea. *Sanders* v. *Benson.* vol. 4, p. 350

8. On a motion for the production of documents, the Defendant was permitted to shew, by affidavit, that they could not be left in the office without great inconvenience; but, as the ground for this indulgence was not stated by the answer, he was ordered to pay the costs. *Gardner* v. *Dangerfield.* vol. 5, p. 389
(See *Smith* v. *Massie.* vol. 4, p. 417)

9. A charging order *nisi* was obtained under the 1 & 2 *Vict.* c. 110, on stock belonging to *A. B.*, who thereupon paid the amount, but disputed his liability to pay the costs of obtaining the order. On the day for shewing cause the case was mentioned, when *A. B.* was held liable to pay the costs of both applications. *Stanley* v. *Bond.* vol. 8, p. 50

10. The Petitioner was ordered to pay all the costs of a special petition, where an order might have been obtained as of course. *Barwell* v. *Brooks.* *In re Cattlin.* vol. 8, p. 121
(*In re Bracey.* vol. 8, p. 266)

11. Plaintiffs entitled to the general costs of suit, deprived of the costs subsequent to the replication, on the ground that they had entered into a mass of unnecessary evidence. *Harvey* v. *Mount.* vol. 8, p. 439

12. A solicitor was allowed the costs of a *second petition* for payment out of a fund in Court, the first order being unavailable owing to the fund having been altered. *Re Bedson.* vol. 9, p. 187

13. Where a Plaintiff imputes personal fraud which is not proved, it is a reason for awarding costs against him on a dismissal of his bill. *Langley* v. *Fisher.* vol. 9, p. 90
(See *Cullingworth* v. *Lloyd.* vol. 2, p. 385
Tanner v. *Heard.* vol. 23, p. 555)

14. Special direction to Taxing Master to see whether matter had been improperly introduced by amendment, and to charge the Plaintiff therewith. *Burchell* v. *Giles.* vol. 11, p. 34
(See *Farrow* v. *Rees.* vol. 4, p. 25)

15. In a charity case, both the Attorney-General and the trustees filed similar exceptions. Held, that the principal Defendants, though charged with costs, ought to have the costs occasioned by the double set of exceptions. *The Attorney-General* v. *Ward.* vol. 11, p. 208

16. Executors had made a division and appropriation of the residue. The husband of one of the residuary legatees, in ignorance of what had been done, filed a bill for an account. At the hearing, the Plaintiff, with notice of what had taken place, persevered in having the accounts taken, and no substantial variation resulted therefrom. Held, that the Plaintiff was entitled to costs out of the estate, up to the hearing, but that the Plaintiff's share alone must bear the subsequent costs. *Thompson* v. *Clive.* vol. 11, p. 475

17. Upon the trial of an issue between an infant and an adult, terms of compromise were signed by their counsel, and the cause was withdrawn. The agreement, though such as the Court would have sanctioned, was not binding on the infant. The adult afterwards refused to be bound by the arrangement. A new trial was directed, and the adult party was ordered to pay so much of the costs of the issue as had been rendered fruitless, and could not be rendered available on the subsequent trial. *Hargrave* v. *Hargrave.* vol. 12, p. 408

18. Upon an inquiry before the Master, a party put in an insufficient examination. Upon an *ex parte* motion, he was ordered to pay the costs thereby occasioned. *Allfrey* v. *Allfrey.* vol. 12, p. 420

19. When the point in contest was sufficiently raised by the bill, the Court gave no costs to a successful Defendant, who brought the cause to a hearing, instead of demurring. *Hollingsworth* v. *Shakeshaft.* vol. 14, p. 492

20. A creditor having continued his proceedings after notice of a decree for administration, was ordered to pay the costs of a motion to restrain him, but was allowed to set them off against the costs of the proceedings at law incurred prior to the notice. *Gardner* v. *Garrett.* vol. 20, p. 469

21. A simple contract creditor obtained an order to administer the intestate's estate. He afterwards had notice that the estate was insufficient to pay the specialty creditor and the costs of the administratrix, but he still persisted in prosecuting the suit. Held, that the fund must be applied, first, in paying the costs of the administratrix, then in paying the Plaintiff's costs down to the notice, and the residue in payment of the specialty creditor. *Sullivan* v. *Bevan.* vol. 20, p. 399

22. Where a charge against a Defendant is struck out by amendment, the Defendant is not justified in entering into evidence on the subject. *Stewart* v. *Stewart.* vol. 22, p. 393

23. The original bill insisted on the invalidity of the appointment of new trustees made by the Defendant on the ground of

her mental incapacity. Though the charge as to mental incapacity was struck out by amendment, the Defendant, nevertheless, entered into evidence on the subject. Held, that the course was improper, and though the appointment was upheld, and the Plaintiff was ordered to pay the costs relating to that matter, yet the Defendant was ordered to pay the costs of the evidence as to her mental capacity. *Stewart* v. *Stewart.*
vol. 22, p. 393

24. A Plaintiff is not justified in adding persons as Defendants to a suit, merely because the original Defendant insists, by his answer, that they are necessary parties. Persons so added, having been dismissed, the Plaintiff was ordered to pay the costs. *Williams* v. *Page.*
vol. 24, p. 654

25. A creditor's suit having been instituted after a statement by the legal personal representatives that there were no assets, which statement turned out to be true, the Plaintiff was ordered to pay the costs. *Fuller* v. *Green.* vol. 24, p. 217

26. A suit was instituted to set aside a charge on a reversion, and a cross suit to establish it. It being set aside for inadequacy of consideration merely, and a decree for redemption being made, the grantor was ordered to pay the costs of charges of fraud which had not been substantiated, but no costs were given as to the revivor of the first suit. The cross suit was dismissed with costs. *Bromley* v. *Smith.* vol. 26, p. 646

27. Purchase of a reversionary estate tail of a person without issue set aside merely for inadequacy of consideration, there being no fraud or pressure, and with costs, the purchaser having resisted the relief; but he was ordered to pay those occasioned by his unfounded allegations of fraud. *St. Albyn* v. *Harding.*
vol. 27, p. 11

28. Costs refused on dismissal of bill at the hearing, on the ground that the Defendant might have raised the point by demurrer. *Webb* v. *England.*
vol. 29, p. 44

29. A purchaser under the Court, who had not obtained his conveyance, paid his money into Court subject to a stop order. Held, that he was entitled to his costs of appearance on further considerntion, he having been served with notice. *Noble* v. *Stow.* (No. 2.) vol. 30, p. 272

30. Costs of a second petition to wind up allowed, under the circumstances. *Re The Commercial Discount Company, Limited.*
vol. 32, p. 198

31. A defendant who had not demurred or raised the objection by his answer refused a portion of the costs of suit upon the dismissal of the bill. *Godfrey* v. *Tucker.*
vol. 33, p. 280

32. Plaintiffs, though successful in their suit, held disentitled to costs by reason of unfounded charges made by them against the Defendant. *Gardener* v. *Ennor.* *Humby* v. *Moody.* vol. 35, p. 549

CO-TRUSTEES, &c. LIABILITY.

[*See* PARTNER'S LIABILITY.]

1. A testator bequeathed to his partner and to *B.* his personal estate, upon trust to invest the same for the benefit of his wife and children. Both the executors proved the will, and the surviving partner retained the testator's moneys in the trade, which were lost. *B.* took no active part in the trusts, but was cognizant of the breach of trust, and took no proceedings to prevent it. Held, that *B.* was responsible for the consequences of the breach of trust. *Booth* v. *Booth.*
vol. 1, p. 125

2. Two executors were directed, after making some annual payments, to invest and accumulate the surplus. One of the executors received the dividends of stock for several years, and misapplied them; it did not appear that the other executor had any knowledge thereof. Held, that the latter was not answerable for the breach of trust.

Two executors sold out stock, and the produce was received by one. Held, that the other was responsible for its misapplication, but was entitled to an inquiry, whether any part had been applied in discharge of claims against the testator. *Williams* v. *Nixon.*
vol. 2, p. 472

3. Two executors permitting their co-executor to retain in his hands the ascertained residue, held liable as for a breach of trust. *Lincoln* v. *Wright.*
vol. 4, p. 427

4. Executors, liable for the default of their co-executor, who had become bankrupt, held entitled, upon payment by them, to the benefit of a proof in bankruptcy against his estate. *Ibid.*

5. A testatrix gave her personal estate to *A.* and *B.*, subject to debts and legacies, upon certain trusts, and she appointed *A.* alone executor. A fund, over which the testatrix had a power of appointment, was transferred into the names of *A.* and *B.* *A.*, the executor, representing that a considerable part of the fund was wanting to pay debts and legacies, induced *B.* his co-trustee, to join in selling out the fund, promising to give a mortgage security for what might not be wanted for debts, &c. *A.* received the whole, but applied a very inconsiderable sum in payment of debts, &c. Held, that *B.* was liable to replace so much of the stock as had not been applied in payment of

debts, &c., and to account for the dividends. *Hewett* v. *Foster*. vol. 6, p. 259

6. A trustee who was absent with his regiment, held liable for co-trustee's default. *Byrne* v. *Norcott*. vol. 13, p. 336

7. A testator bequeathed a mortgage, secured by a conditional surrender, and which had become absolute, to his two executors, upon trust to continue and hold it on certain trusts. The executors assented to the legacy, but did not procure themselves to be admitted, and by reason thereof one of them was enabled to receive the money and release the estate. The money being misapplied. Held, that the co-executor had become a trustee and was liable for his default. *Dix* v. *Burford*. vol. 19, p. 409

8. Two trustees having properly sold out trust money, one of them handed the cheque for the proceeds to the other, who misapplied it. Held, that they were both liable. It is a contradiction in terms to say, that a trustee who acts is not an active trustee, and a defence by a trustee, that he only acted for conformity's sake is unavailing. *Trutch* v. *Lamprell*. vol. 20, p. 116

9. A testator gave annuities to the Plaintiffs and appointed three executors, one of whom (*A. B.*) was the residuary legatee. No fund was set apart to answer the annuities, but *A. B.* was permitted by his co-executors to receive the assets, which he wasted, though he paid the annuities for eighteen years, at the end of which he became insolvent. Held, that the co-executors were liable to the Plaintiffs for *A. B.*'s receipts. *Egbert* v. *Butler*. vol. 21, p. 560

10. Two trustees executed a release for trust money, but one alone obtained possession of it, and he invested it on improper security. Held, that the other was liable, for it was his duty to see that it was properly invested. *Thompson* v. *Finch*. vol. 22, p. 316

11. A testator, who died in 1835, directed his executors and trustees (*A.* and *B.*) to convert his real and personal estate, and after paying his debts, &c. to invest the proceeds on mortgage of freeholds, &c. or on government securities. *A.* and *B.* deposited the proceeds in a Bank, at interest, in their joint names. *A.* died in 1842, and *B.* drew out the balance and applied it to his own use. No sufficient reason being shewn for retaining the money in the Bank, it was held, that the estate of *A.* was liable to make good the loss. *Gibbins* v. *Taylor*. vol. 22, p. 344

12. *A.* and *B.* were trustees. A deed was prepared appointing *C.* a new trustee in the place of *B.* It was executed by *C.*, but not by the other parties, so that the appointment was invalid. At the same time, the trust fund was transferred by *A.* and *B.* to *A.* and *C.* Afterwards *A.* and *C.* authorized the husband of the tenant for life to receive the fund, and it was lost. Held, that both *C.* (who had not been appointed a trustee, though she had acted as such) and *B.*, were liable for the loss. *Pearce* v. *Pearce*. vol. 22, p. 248

13. *C.*, who knew that *T.*, his co-executor, owed money to the testator on an equitable mortgage, allowed him to keep the title-deeds in his sole possession, taking no steps to compel payment, though he was very active in recovering a debt due to himself personally from *T.* *T.* deposited his title-deeds with another person as a security for fresh advances, and the testator's debt was lost. Held, that *C.* was liable. *Caudler* v. *Tillett*. vol. 22, p. 257

14. A testator placed his securities in the custody of *T.* his confidential solicitor. By his will, he appointed *T.* and *C.* his executors. *T.* made out a list of such securities, which he signed and retained in a box, but he gave the key to *C.* Afterwards *T.* sent the box to *C.*, requesting him to take out a mortgage security and send it to him for the purposes of an intended transfer. *C.* having no reason to suspect *T.* complied, and the mortgage money was received by *T.* alone and misapplied by him. Held, that his co-executor (*C.*) was not liable, it appearing from the evidence that the solicitor had a second key of the box, and could and probably did open the box himself. *Ibid.*

15. Two trustees, *A.* and *B.*, joined in the receipt of trust money. *A.* allowed *B.* to retain the cheque for money, which, against the remonstrances of *A.*, he placed in the hands of a solicitor to invest on mortgage, and it was lost. Held, that both were liable. *Griffiths* v. *Porter*, vol. 25, p. 236

16. Two trustees, *A.* and *B.*, had allowed trust money to be received by their solicitors. The *cestui que trust* authorized its investment on a mortgage by *B.* alone. The money being in danger and the solicitors pressed, a mortgage was given, but as to which *B.* exercised no judgment, and it turned out insufficient. Held, that both trustees were liable for the loss. *Ibid.*

17. *A. B.*, one of the two trustees and executors of a will resident in *London*, authorized a person to get in three mortgages (part of the estate). The solicitor forwarded the deeds of reconveyance to *C. D.*, the other trustee, in the country, who executed and returned them. The solicitor received the money and paid it to *A. B.* alone, who misapplied it. Held, that *C. D.* was liable for the amount. *Cowell* v. *Gatcombe*. vol. 27, p. 568

18. *A. B.*, one of two trustees, rendered

accounts in the name of the two, which stated that one-third of the income had been retained and invested, but, in fact, such investment had been made, and *A. B.* alone had received and misapplied these moneys, which were lost by his bankruptcy. The other trustee, however, having, at a meeting of the *cestuis que trusts*, so acted as to sanction and adopt the accounts, he was held liable for *A. B.*'s default. *Horton* v. *Brocklehurst.* (No. 2.) vol. 29, p. 504

COUNTY COURT.

1. Writ of prohibition against a County Court Judge granted in the Vacation by the Master of the Rolls. Jurisdiction was afterwards given to any Common Law Judge to grant such a prohibition in the Vacation. *See* 13 & 14 *Vict.* c. 61, s. 22. *Wright* v. *Cattell.* vol. 13, p. 81
2. After a decree or order on summons for the administration of an estate, a legatee will be restrained from proceeding in the County Court to recover a legacy, and that notwithstanding the legatee submits to take a judgment against the executor *de bonis propriis*, alleging a *devastavit*. *Ratcliffe* v. *Winch.* vol. 16, p. 576

COUNTY PALATINE.

[*See* PALATINE COURT.]

COURT ROLLS.

The usual order was made for the deposit by the Defendant of all documents in his possession. Some of them consisted of the court rolls of a manor, of which the Defendant acted as steward, but his right to that office was contested. The Court released the Defendant from the necessity of depositing them in Court, and ordered the production at the steward's. *Carew* v. *Davis.* vol. 21, p. 213

COUSIN.

Bequest by will to cousins ("descendants from my father's and mother's brothers and sisters"), with a substituted gift to the "issue" of any dying in the testator's life, the "issue" to take their parents' shares. Held, that "cousins" must be construed "first cousins," and that "issue" meant only the children of first cousins, notwithstanding the testator had, by a codicil, excluded by name all his first cousins, and, his uncles and aunts being all dead, he could not possibly have any other first cousins. *Stevenson* v. *Abingdon.* vol. 31, p. 305

COVENANT.

[*See* COVENANT FOR TITLE, COVENANT TO SETTLE AFTER-ACQUIRED PROPERTY, LANDLORD AND TENANT, NOTICE, RESTRAINT OF TRADE, SATISFACTION.]

1. Parties having an equitable estate only, agreed to grant a lease to *A. B.*, which was to contain special covenants both on the part of the lessors and lessee. The intended lessors died before the lease had been granted, and their interest became vested in bankrupt assignees and an heir-at-law, against whom a decree for specific performance was made. Held, that receiving the benefit of the lessee's special covenants, the assignees and heir were themselves bound, to the extent of their interest in the property, to enter into the special covenants which the original intended lessors had contracted to enter into. *Page* v. *Broom.* vol. 3, p. 36
2. Covenant in a farming lease not to sow with more than two grain crops during four years. Held, to apply to *any* four years of the term however taken, and not to each successive four years from the commencement. *Fleming* v. *Snook.* vol. 5, p. 250
3. A party covenanted "to do and perform all such acts, matters, and things as should be requisite for continuing and keeping on foot a policy." Held, that this covenant could not be read negatively, as if he had covenanted to do no act whereby it would become void, and, therefore, that the covenant was not broken by the suicide of the covenantor, whereby the policy became forfeited. *Dormay* v. *Borrodaile.* vol. 10, p. 335
4. A covenant, though in gross at law, is nevertheless binding in equity upon an assignee with notice. *Tulk* v. *Moxhay.* vol. 11, p. 571
5. *A.* being seised of the centre garden and some houses in *Leicester Square*, conveyed the garden to *B.* in fee, and *B.* covenanted for himself and his assigns to keep the garden unbuilt upon, &c. Held that a purchaser from *B.*, with notice of the covenant, was bound by it in equity, whether he was bound at law or not, and an injunction was granted to restrain him infringing the covenant. *Ibid.*
6. A covenant is to be construed most strongly against the covenantor. *Warde* v. *Warde.* vol. 16, p. 103
7. Demurrer allowed to a bill by the lessee of a coal-mine to be relieved from his rent on the ground of a deficiency of the coal to be worked. *Mellers* v. *The Duke of Devonshire.* vol. 16, p. 252
8. *A.* demised a coal-mine to *B.* at 60*l.* per acre for the coal gotten, and *B.* covenanted to work not less than two acres annually or pay the rent for that quan-

tity, "whether the same should be got or not." There was a proviso for cesser if all the coal was exhausted. At the end of the term, the lessee alleging that there was a deficiency in the coal, and that, from "inevitable causes, it was impossible to get two acres annually, and that during the term he had paid for more than he had got," sought to recover back the excess. A demurrer was allowed, on the ground that the covenant was absolute, and the lessee was bound to pay whether he got the quantity or not, and that there was no allegation of an actual exhaustion of the coal. *Mellers* v. *The Duke of Devonshire.*
vol. 16, p. 252

9. A voluntary covenant by a party to pay a sum of money to persons therein mentioned, either in his lifetime or in a certain time after his decease, is a valid covenant, and creates a valid debt, though the deed was kept in the covenantor's possession till his death, and its execution was unknown to the covenantees or *cestuis que trusts*. *Alexander* v. *Brame.*
vol. 19, p. 436

10. Held, on the construction of a covenant on the part of the lessor, not to "let" any house or any land for the erection of any house to be used as an hotel, that the lessor, and those who claimed under him, could not allow any of his land to be used for that purpose. *Jay* v. *Richardson.* vol. 30, p. 563

11. This Court will not interfere in the case of a mere nominal breach of covenant. *Western* v. *Macdermot.* vol. 35, p. 243

12. *A. B.*, the owner of seven lots of land, sold two of them to *C. D.*, and he retained five. They entered into mutual covenants for bearing, in proportion, the expenses of a road common to all the lots, and there was a proviso that the expenses should be a charge upon the owners of the seven lots in proportion. Held, that the land was not charged, and that *A. B.* was entitled to have an indefeasible title to his five lots registered under the 25 & 26 *Vict.* c. 53, without noticing the proviso or the claims of *C. D.* *In re Drew; Ex parte Mason.*
vol. 35, p. 443

COVENANT FOR TITLE.

1. *A. B.* covenanted with his lessee for quiet enjoyment as against any person "claiming by, from, or under" him. An eviction by a prior appointee of *A. B.* and *C. D.* is a breach of the covenant. Held, also, that the case was not altered by the grant to the lessee being "as far as in his power lay, or he lawfully might or could." *Calvert* v. *Sebright.*
vol. 15, p. 156

2. *A.* sold some building land to *B.*, and he covenanted for title. After some houses had been built on the land, the purchaser was evicted. Held, that the purchaser was entitled to recover upon the covenants, not only the value of the land, but also that of the houses subsequently built thereon. *Bunny* v. *Hopkinson.* vol. 27, p. 565

3. *A. B.* sold a piece of land to *C. D.*, and covenanted for quiet enjoyment. Afterwards *A. B.* raised the level, by three inches, of a brook running past *C. D.*'s grounds through his, *A. B.*'s, property. Held, that this was not a proper subject of complaint for the interference of this Court. *Ingram* v. *Morecraft.*
vol. 33, p. 4

COVENANT TO SETTLE AFTER-ACQUIRED PROPERTY.

1. Covenant to settle after-acquired property, held to extend to a reversion which fell in on the death of the wife. *Graffiey* v. *Humpage.* vol. 1, p. 46

2. A woman being entitled to a reversionary interest in property for her separate use, both she and her intended husband separately covenanted to settle any property which she, or her husband in her right, might become entitled to, upon certain trusts The above interest having fallen into possession, Held, that it was subject to the trusts of the settlement. *Tawney* v. *Ward.* vol. 1, p. 563

3. On the marriage of a lady who was possessed of funded property and shares in waterworks, the funded property alone was settled; the settlement, however, contained a recital of an intention, that all property which the wife, or her husband in her right, should after the marriage become entitled to, should be settled on similar trusts, and a covenant by the husband and by the wife, that all property which she, or her husband in her right, should after the settlement become entitled to should be settled. Held, that the shares were subject to the trusts of the settlement. *James* v. *Durant.*
vol. 2, p. 177

4. Upon the marriage of a ward, the intended husband proposed to settle the whole of her fortune. The Master, in ascertaining her fortune, omitted to state a reversionary interest. Her property was settled omitting the reversionary interest, and the husband covenanted to settle any property to which the wife or he, in her right, "should at any time during the marriage" become entitled. Held, that the reversionary interest ought to be settled. *Marquis of Bute* v. *Harman.* vol. 9, p. 320

5. By a marriage settlement it was expressed to be agreed between the parties thereto, and the husband covenanted, that

if any personal property should during coverture come to or vest in the wife, or in him in her right, the same should be transferred, by all proper parties, upon the trusts of the settlement. The wife became entitled to a reversionary interest in a *chose in action*, which did not fall into possession until after the death of the husband. Held, that the wife was bound to settle it. *Butcher* v. *Butcher*.
vol. 14, p. 222

6. Covenant to settle after-acquired property of the wife, held to extend to property acquired after the death of the husband. *Stevens* v. *Van Voorst*.
vol. 17, p. 305

7. Husband and wife covenanted to vest in the trustees of their settlement, upon the trusts thereof, "all property which should come to her absolutely, and not bound by any trust or provision, otherwise than for her absolute use." Held, that property bequeathed to her "for her separate use absolutely" was bound by the covenant. *Milford* v. *Peile*.
vol. 17, p. 602

8. Held, secondly, that leaseholds and chattels bound by the covenant were to be enjoyed in specie and unconverted. *Ibid.*

9. Articles made on the marriage of a female infant recited, that it had been agreed that all the real and personal estate to which she was then or thereafter might be entitled should be settled, and the husband covenanted, "in case she would voluntarily consent thereto, but not otherwise," that he and she would settle the same. Held, that the consent applied only to real estate, and that the personal estate must be settled though the wife refused to consent thereto. *In re Daniel's Trust*. vol. 18, p. 309

10. A marriage settlement recited an agreement that the future property of the wife should be settled, but the covenant to settle was on the part of the husband alone, to execute all necessary deeds, as that such property should (so far as he was concerned) be vested in the trustees, on the trusts of the settlement. Held, that property afterwards given to the separate use of the wife was not liable to be settled. *Hammond* v. *Hammond*.
vol. 19, p. 29
(*Coventry* v. *Coventry*. vol. 32, p. 612)

11. A husband covenanted to settle the share of his wife and of himself "in her right" in the stocks comprised in her great-uncle's will. Under the will the fund was limited to the husband, in case of his surviving his wife and her father, and of there being no issue. Held, that the husband's interest was not comprised in his covenant. *Ibbetson* v. *Grote*.
vol. 25, p. 17

12. A covenant by the husband alone to settle the after-acquired property of the wife does not bind her separate property, but such a covenant of the husband and wife does. Such a covenant to settle does not bind property over which a wife is deprived of the power of disposition. *Coventry* v. *Coventry*. vol. 32, p. 612

13. Covenant in a marriage settlement to settle the wife's after-acquired property (save and except "any estate or effects already settled to her separate use"). Held, that a legacy afterwards bequeathed to her for her separate use was not included in the covenant. *Whitgreave* v. *Whitgreave*. vol. 33, p. 582
(See *Duncan* v. *Cannan* (in Scotch Settlement). vol. 21, p. 307)

14. By a settlement made in *June*, 1842, property of the wife was settled, and the husband covenanted that if, during the coverture, any real or personal estate should "descend or devolve to or vest" in his wife, or in him in her right, he would settle it. In *August*, 1842, a sum, part of the distributive share of the wife in the estate of her father, who died in 1821, and which had been overlooked, was recovered and paid to the trustees of the settlement, and the husband received the income for twelve years. Held, that it was not within the covenant to settle, and that the husband had not so acquiesced as to make it subject to the trusts of the settlement. *Churchill* v. *Shepherd*.
vol. 33, p. 107

15. A marriage settlement recited an agreement that the after-acquired property of the wife should be settled, but the covenant to settle was on the part of the husband only. Held, that the wife was not bound by it. *Young* v. *Smith*.
vol. 35, p. 87

CREDITOR.

[*See* ADMINISTRATION, ORDER OF ASSETS, PAYMENT OF DEBTS AND LEGACIES.]

CREDITORS' DEED.

1. Specialty creditors, whose debt carried interest, and other creditors, whose debts did not carry interest, executed a creditors' deed, by which the debtor's property was to be divided between the creditors, "rateably and in proportion to the amount of their respective debts." The creditors released their debts. Held, that the specialty creditors were entitled to a dividend on the amount of interest accruing subsequent to the date of the deed. *Bateman* v. *Margerison*.
vol. 16, p. 477

2. Though a creditor, who is prevented by accident signing a composition deed within the period specially appointed for that purpose, may obtain equitable relief,

yet it will not be extended to one who has delayed making his claim, and has set up a title adverse to the deed. *Watson* v. *Knight.* vol. 19, p. 369

3. A creditors' deed was executed in 1849. The plaintiff, a creditor who had executed the deed, insisted on an alleged settled account, and refused to verify his claim, as required by the deed. A dividend was paid the other creditors in 1854, and in 1857 the Plaintiff instituted a suit for the performance of the trusts of the creditors' deed. There being no valid settled account, the Court held, that the Plaintiff was entitled to the benefit of the deed, but only on the terms of not disturbing any dividend already made. *Field* v. *Cook.* vol. 23, p. 600

4. It is not, in equity, necessary that a creditor should execute a creditors' deed; if he do some act which amounts to acquiescence he is entitled to the benefit of it. But it is not sufficient for him merely to stand by and take no part in the matter. *Biron* v. *Mount.* vol. 24, p. 642

5. Creditors who have not acceded to a creditors' deed before the debtor has taken the benefit of the Insolvent Debtors' Act, cannot afterwards come in and claim the benefit of it. *Ibid.*
(See *Sherwood* v. *Walker.* vol. 6, p. 401)

6. Held, on the construction of a creditors' deed, that the dividends which the creditors would have been entitled to, if they had acceded to the deed, passed, on their default, to the debtor, and to his assignee under a subsequent insolvency. *Ibid.*

7. A creditors' deed contained a covenant, on the part of the creditors, to indemnify the inspectors. Held, that creditors who had not executed the deed, but had come in or acceded to the arrangements thereby made, were bound by the covenant. *Cheeseborough* v. *Wright.* (No. 2.) vol. 28, p. 283

8. Composition arrangements with creditors form an exception to the rule, that an agreement to accept part of a debt in discharge of the whole is no legal satisfaction of the remainder. *Pfleger* v. *Browne.* vol. 28, p. 391

9. Upon a composition between a debtor and his creditors, a creditor cannot ostensibly accept a composition and sign the deed which expresses his acceptance of the terms, and at the same time stipulate for or secure to himself a peculiar and separate advantage which is not expressed upon the deed. *Ibid.*
(See *Cullingworth* v. *Loyd.* vol. 2, p. 385)

10. If, upon a composition between a man and his creditors, one accepts the composition, and, in addition, agrees that the debtor shall keep up a policy on his life for the ultimate payment of the remainder of the debt, such an agreement is void, unless every creditor assents, and the policy belongs to the representatives of the debtor. *Pfleger* v. *Browne.* vol. 28, p. 391

11. Trustees of a creditors' deed were empowered to require creditors to prove their debts before executing it. The trustees having once allowed a creditor to execute the deed for a certain sum, it was held, that they could not afterwards contest the debt, except on a bill filed for that purpose. *Lancaster* v. *Elce.* vol. 31, p. 825

12. As to the duties and obligations of inspectors and managers under a creditors' deed. *Chaplin* v. *Young.* (No. 1.) vol. 33, p. 330

CROSS-EXAMINATION.

[*See* WITNESS (CROSS-EXAMINATION).]

CROSS-REMAINDERS.

[*See* ACCRUER, REFERENCE (GIFT BY).]

1. Devise under which the testator's children took estates for life, as tenants in common, in the freeholds and copyholds, with remainder to the grandchildren in tail general, in the shares of their respective parents, with cross-remainders in tail between such grandchildren respectively, and with remainder for life to the survivors or survivor, others or other of the parents, in equal shares for life, with remainder in tail to their children; the shares accruing to such survivors, &c. to be subject to the same limitations and such benefit of survivorship as the original shares. *Corsham* v. *Newland.* vol. 2, p. 145

2. A testator gave a moiety of his estate to the children of *A.*, and the other moiety to the children of *B.* The will contained a single clause of survivorship and accruer applicable to all the children, and not, in terms, distributive, with a gift over if there should be no children of *A.* and *B.*, "or of either of them," or being such all such children should die without having attained a vested interest. Held, that there were no cross-remainders between the two classes of children, and that on the death of *A.* without having been married, the children of *B.* would not take the first moiety. *Edwards* v. *Tuck.* vol. 23, p. 268

3. A testator devised real and personal estate to *A.* for life, with a direction to the executors, after *A.*'s death to divide it amongst all her "children and their lawful issue, share and share alike." There was a gift over of the leaseholds to other persons on a total failure of

issue of the children. Held, that the children took estates tail in the realty and absolute interest in the personalty, and that cross-remainders were not to be implied in regard to the leaseholds. *Beaver* v. *Nowell.* vol. 25, p. 551

4. Whenever an estate is devised to two or more devisees in tail, with a gift over in case they die without issue, cross-remainders over in tail will be implied between them, but this rule does not apply where cross-remainders are expressed between the same objects, in different events and under different circumstances. *Atkinson* v. *Barton.* vol. 31, p. 272 (See *Rabbeth* v. *Squire.* vol. 19, p. 77)

5. Devise of real estate to four granddaughters, by name, for their respective lives, in equal shares, remainder to trustees to preserve contingent remainders, remainder, in equal shares, to the children of the said four granddaughters and the heirs of their bodies, such children taking their mother's share, as tenants in common in tail, remainder to the survivors or survivor of such children, and the issue of them, his or her bodies, and in default of issue of his said granddaughters over. Held, by the Master of the Rolls, that cross-remainders were to be implied between the granddaughters, but by the Lords Justices, that they were to be implied between the children of the granddaughters. The House of Lords, however, affirmed the judgment of the Master of the Rolls. *Ibid.*

6. Cross-remainders not implied in respect of accrued shares where the original shares are expressly limited over. *Dutton* v. *Crowdy.* vol. 33, p. 272

7. Leaseholds for life were settled by deed on the parents for life, with remainder to the children of the wife equally and the heirs of their bodies, and if but one child then to such child and the heirs of his body, and in default of such issue, to the heirs of the wife. Held, that there were no cross-remainders between the children, and that on the death of a child without issue and without having made any disposition, his share went to the heir of the wife. *Bainton* v. *Bainton.* vol. 34, p. 563

CROSS SUIT.

1. *A. B.*, resident abroad, filed a bill against *C. D.*, whereupon *C. D.* filed a cross bill; and *C. D.*, before answering the original bill, moved to stay all proceedings in the original suit until *A. B.* had answered the cross bill. Held, that this was irregular. *Wigley* v. *Whitaker.* vol. 1, p. 349

2. A cause and cross cause being dismissed with costs: Held, that the costs of evidence, taken in the former cause, but used in both, should be paid in the cause in which it was taken. *The Corporation of Arundel* v. *Holmes.* vol. 4, p. 325

3. An estate was conveyed by *A.* to *B.*, upon trust, for ten years, to apply the rents in payment to *B.* of the interest and capital of 1,000*l.* lent by *B.* to *A.*, and then to sell, pay off the residue of the 1,000*l.*, and hold the remainder in trust for the wife and children of *A.* The rents exceeded the interest. *B.* permitted *A.* to retain possession, and the interest was not applied as directed. Upon a bill by *B.* against *A.* and his wife and children for a sale: Held, that *B.* could not, until he took possession, be made liable for what, without his wilful default, he might have received, except upon a cross bill raising that question. *Beare* v. *Prior.* vol. 6, p. 183

4. To a bill for the specific performance of a partnership, one Defendant objected to the misconduct of another partner, who was a Co-defendant. Held, that this defence could only be made available upon cross bill. *England* v. *Curling.* vol. 8, p. 129

5. By the General Orders, the costs of a bill of discovery are to be costs in the cause, unless the Court otherwise orders. Held, that the Court will not vary the rule, merely because the Defendant does not make the whole matters of a bill of discovery available. *Robinson* v. *Wall.* vol. 10, p. 73

6. An original cause and cross cause for discovery were attached to V.-C. *K. Bruce*'s Court. The original cause was heard before an answer to the cross cause had been obtained. The Defendant to the bill of discovery then put in his answer, and obtained, at the Rolls, an order of course for his costs, suppressing the fact that the bill of discovery was a cross bill. It was discharged for irregularity. *Watts* v. *Penny.* vol. 11, p. 435

7. Exceptions being allowed, the Plaintiff obtained an order to amend, and that the Defendant might answer the exceptions and amendments together. On the same day, a cross bill was filed, but the *subpœna* was not served until the following day. Held, that the Plaintiff in the original suit, having obtained his order to amend before notice of the cross bill, had not lost his priority. *Gray* v. *Haig.* vol. 13, p. 65

8. A deed, *primâ facie* valid at law, will be acted on in equity until it has been set aside, the Court never giving a Defendant active relief without a cross bill. *Jacobs* v. *Richards*; *Jacobs* v. *Porter.* vol. 18, p. 300

9. Directors of a company were prohibited

giving bills of exchange; but they had powers to borrow on mortgage. They however gave bills to secure an existing debt, and a mortgage was, at the same time, executed under the seal of the company, which was made subject to redemption on payment of the bills. Held, that upon a bill of foreclosure by the mortgagee, the deed of the company must be treated as valid, until set aside by an independent proceeding. *Scott* v. *Colburn.* vol. 26, p. 276

10. When a purchaser of a mere equitable interest in property after a conveyance of it to him files a bill to obtain from the trustees the legal estate, the vendors may, without filing a cross bill, set up the invalidity of the purchase. *Hannah* v. *Hodgson.* vol. 30, p. 19

11. A seceding congregation of a chapel attempted to obtain possession of it by procuring some of their body to be appointed new trustees. In a suit to set aside the appointment: Held, that the new trustees could not raise as a defence, that the congregation had departed from the original form of worship, and that such an objection could only be made available on an information filed by them and raising the question. *Newsome* v. *Flowers.* vol. 30, p. 461

12. In defence to a bill for redemption, the mortgagee set up a contract entered into with him by the mortgagor for the sale to him of the equity of redemption. This the mortgagor insisted had been abandoned. Held, that this defence could only be made available by a cross bill. *Howells* v. *Wilson.* vol. 34, p. 573

CROWN.

[*See* KING, PREROGATIVE.]

Grants by the Crown are construed favourably to the grantor, and in such a case the usual rule, as to the construction of grants, is inverted. If it be shewn that the King is deceived in his grant, it will not include a subject-matter not expressed. *Attorney-General* v. *Ewelme Hospital.* vol. 17, p. 366

CUMULATIVE LEGACY.

[*See* ADEMPTION, SATISFACTION, SUBSTITUTED LEGACY.]

1. Several annuities given by a will and codicils held to be cumulative. *Spire* v. *Smith.* vol. 1, p. 419

2. A testator bequeathed to Mrs. *L. Pitney* an annuity of 150*l.*, payable half-yearly, for her separate use. He afterwards wrote in the margin opposite this bequest, "Now Mrs. *J. Gray*, one hundred guineas per annum, in quarterly payments." Mrs. *L. Pitney* had married a Mr. *Gray* prior to the date of the will. Held, that the annuities were substitutional, and that the legatee was entitled to an annuity of 100 guineas for her separate use. *Martin* v. *Drinkwater.* vol. 2, p. 215

3. Where a testator makes distinct gifts by distinct codicils the presumption is, that the subsequent gifts are additional, and that the testator, when he made the last had not forgotten the former, and did not mean to make the last either in vain or in substitution for the former; but this presumption may be strengthened or rebutted by any circumstances which, by just inference and presumption, may enable the Court to ascertain the real intention of the testator. The nature of the legacies and the extent of interest in them which is given are very material circumstances; but the Court also regards the situation of the testator with respect to the persons for whom he is making provision, and the other directions which he may have given.

A legacy of 5,000*l.*, subject to be divested if the legatee should die before attaining twenty-one or marriage, would not be considered as a repetition of or substitution for two legacies of 1,000*l.* and 4,000*l.* not subject to be so divested and given by a subsequent codicil. *Martin* v. *Drinkwater.* vol. 2, p. 95

4. By the first codicil, the testator gave to his illegitimate daughter *Phillis* an annuity of 100*l.* a year and a sum of 1,000*l.*, with a power to the trustees to advance 250*l.* for her benefit. By the second codicil the testator merely revoked the appointment of a trustee. By his third codicil he gave *Phillis* a debt of 1,546*l.* sterling, a legacy of 1,000*l.* and one of 4,000*l.* when his estates were cleared of all present demands on them. By a fifth codicil he charged two estates with 5,000*l.* each for his illegitimate daughters *Phillis* and *Sybil*, to be divested on their dying under twenty-one or before marriage. By a subsequent codicil he confirmed his will and the second codicil (which varied the trustees only), and also (though inaccurately describing it) the fifth codicil; and after reciting that he had by one or both of the codicils to his said will *in a sufficient manner* provided for *Phillis*, he gave to his illegitimate daughters *Sybil* and *Clara* an estate similar in all respects to that which by his said codicil or codicils he had given to his said other daughter, and he declared that *Sybil* and *Clara* should have the same provision as he had made for his other daughter. Held, that the legacies were not cumulative and that the daughters were entitled to the provision made by the fifth codicil only. *Robley* v. *Robley.* vol. 2, p. 95

5. A testator, in his lifetime, by bond secured to *H. C. C.* an annuity of 300*l.* for life, payable on the usual quarter days, &c.; and by his will he confirmed it, and bequeathed a further annuity of 200*l.*, payable in the same manner, it being his intention that she should receive an annuity of 500*l.* instead of 300*l.* By a codicil, the testator directed his trustees to raise 500*l.* a year, and pay the same to *H. C. C.* during her life, by quarterly payments. Held, that the second annuity was cumulative. *Radburn* v. *Jervis.* vol. 3, p. 450

6. *B. H.*, for valuable consideration, granted to his two sisters annuities of 300*l.* a year each, during their lives, payable in *January*, *April*, *July*, and *October*. By his will he gave his widow an annuity in lieu of the annual sum payable to her under her marriage settlement, and of dower; and he directed his debts to be paid, and bequeathed to his sisters respectively, annuities of 900*l.* and 500*l.* each for their separate use, payable on the usual quarterly days of payment. Held, that the annuities of 300*l.* each were not satisfied by the annuities given by the will, and that the sisters were therefore entitled to both annuities. *Hales* v. *Darell.* vol. 3, p. 324

7. A testator bequeathed as follows:—"to *M. C. B.*, besides *Austrian metalliques* for 104,000 florins, I give 5,000*l.*" By a subsequent codicil he bequeathed as follows:—"Whereas, I have by indorsement on two little parcels, containing 104 *Austrian* bonds of 1,000 florins each, given them to *M. C. B.*; I confirm said disposition, and add to it 20,000*l.*" Held, first, that the testator, as to the *Austrian* securities, referred to the same subject-matter; and the testator, not possessing such securities at his death, that the gift of them failed; and secondly, that the gifts of the two sums of 5,000*l.* and 20,000*l.* (though both were connected with the gift of the same *Austrian* securities were cumulative and not substitutional. *Marquis of Hertford* v. *Lord Lowther.* (*Countess Berchtoldt's case.*) vol. 7, p. 107

8. By his will the testator bequeathed his residue between *Ann Sarah Parker* and ten other persons (naming them). Two of the legatees having died, the testator, by a codicil, gave the residue between eight persons, naming them, and *Ann Sarah Parker*, *G. F.*, and *Ann Parker*. It appeared that *Ann Sarah Parker* and *Ann Parker* were the same persons. Held, that she was entitled to one-tenth, and not to two-elevenths of the residue. *Read* v. *Strangeways.* vol. 12, p. 323

9. A testator bequeathed to his daughter *A.* 1,000*l.* and 100 banking shares, and to his daughter *B.* 3,000*l.* and 100 shares. By a codicil he revoked both gifts to *A.* and bequeathed to her 500*l.* and "*the*" 100 shares specified in his will. But as to *B.* he revoked the 3,000*l.* only, and gave to her 1,500*l.* and 100 shares. Held, that *B.* was entitled to 200 shares, the legacies being cumulative. *Lobley* v. *Stocks.* vol. 19, p. 392

10. The testator bequeathed to *A.*, for her life, an annuity of 10*l.*, the annuity of nineteen guineas upon the death of *A.*, and the annuity of 50*l.* when the mortgage on his estate should be reduced to 500*l.*, "and which respective sums of 10*l.*, 19 guineas, 50*l.*, as the case might be, were to be paid" half-yearly. Held, that they were cumulative. *Hartley* v. *Ostler.* vol. 22, p. 449

11. A testator gave a legacy of 7,000*l.* to his wife, and other similar legacies. By a codicil, he gave a legacy of 6,000*l.* to his wife and other legacies, and he directed "that so far as the codicil was in addition to any testamentary document he had already made, he wished it to take effect, and not cancel or revoke any prior document which might exist." Held, that the legacies were cumulative. *Townshend* v. *Mostyn.* vol. 26, p. 72

12. Gifts of legacies of different amounts to the same persons, by two different instruments. Held, substitutional, and not cumulative. *Tuckey* v. *Henderson.* vol. 33, p. 174

13. By her will, a testatrix, under an existing power, appointed 1,000*l.* to *A. B.* By a subsequent testamentary instrument she bequeathed 1,000*l.* to *A. B.* Held, that the gifts were cumulative. *Ibid.*

CURTESY.

There is no estate by the curtesy issuing out of an estate *pur auter vie*. *Stead* v. *Platt.* vol. 18, p. 50

CUSTOM.

Whether a custom for a lord to prosecute mining operation under the soil, so as to destroy the buildings of the copyholders, without making any compensation, is a valid custom, *quære*. *Hilton* v. *Lord Granville.* vol. 4, p. 130

CY-PRES.

1. The doctrine of *cy-près* is not to be extended. *Hale* v. *Pew.* vol. 25, p. 335

2. The *cy-près* doctrine is inapplicable when the limitation to unborn children gives them a fee. *Ibid.*

DAMAGES.

1. Agreement for the sale of a lease, "with possession on the 1st of *December*, the

rent to commence at *Christmas*." Possession was not given until the 31st of *January*, through the default of the vendor. Held, that the purchaser was entitled to compensation, and an inquiry was directed. *Gedye* v. *The Duke of Montrose*. vol. 26, p. 45

2. In a case where the Court has no jurisdiction to grant a specific performance of a contract, it has no jurisdiction, under the 21 & 22 *Vict.* c. 27, to award and assess damages for its nonperformance. *Rogers* v. *Challis*. vol. 27, p. 175
3. An injunction was granted, on the usual undertaking to be answerable in damages. The injunction having been dissolved the Defendant moved to dismiss for want of prosecution, and for a reference to ascertain the amount of damages. The Plaintiff undertook to speed. Held, that this was not the proper time for obtaining a reference as to damages. *Southworth* v. *Taylor*. vol. 28, p. 616
4. A mortgagor entered into a contract to grant a lease, which the mortgagee refused to ratify. Held, that specific performance could not be enforced, but the Court under Sir *Hugh Cairns'* Act (21 & 22 Vict. c. 27, s. 2), assessed the damages sustained. *Howe* v. *Hunt*. vol. 31, p. 420
5. In a case for an injunction, which, from circumstances arising after the bill was filed, could not be granted, the Court awarded damages, though not specifically prayed for by the bill. *Catton* v. *Wyld*. vol. 32, p. 266
6. The Defendant, a mortgagee, agreed to grant a lease to the Plaintiff, but upon the mutual understanding that the mortgagor was to concur. The mortgagor having refused his concurrence: Held, that the Plaintiff was not entitled to insist on having a lease from the mortgagee alone; and secondly, that he was not entitled to damages in equity. *Franklinski* v. *Ball*. vol. 33, p. 560

DEATH WITHOUT ISSUE.

[*See* DYING WITHOUT ISSUE, IMPLICATION (GIFT BY).]

Effect of the 29th section of the Statute of Wills on the construction of "death without issue." *Morris* v. *Morris*. vol. 17, p. 198

DE BENE ESSE.

[*See* WITNESS (DE BENE ESSE).]

DEBT.

[*See* ADMINISTRATION, CHARGE OF DEBTS, CREDITORS' DEED, INTEREST, ORDER OF ASSETS, PAYMENT (DEBTS AND LEGACIES), PROOF OF DEBTS, SPECIALTY DEBT.]

1. "Debts" of a testator held to include damages accrued after his death under an equitable liability to indemnify. *Willson* v. *Leonard*. vol. 8, p. 373
2. A suit was instituted by a son against his mother. A compromise was effected, whereby the mother agreed to settle a sum on the son and his family, and pay 170*l.* amongst such of the son's creditors "as should be willing to accept the same in full discharge of their respective debts, and should express their consent" before a given day. None of the creditors assented, and no payment was made to them. The son became insolvent. Held, that the mother was not liable to pay the 170*l.* to the assignees. *Sherwood* v. *Walker*. vol. 6, p. 401
3. Fees to counsel's clerks are mere gratuities, for which they have no legal demand, and this Court has no jurisdiction in respect of such fees as against the clerks. *Ex parte Cotton*. vol. 9, p. 107
4. A surety was compelled to pay money for his principal which the principal was decreed to repay, with the costs of suit. Held, that the claim of the surety constituted a debt sufficient to support a creditor's administration suit. *Rice* v. *Gordon*. vol. 11, p. 265
5. By a settlement, the wife's father covenanted to pay 3,000*l.* to trustees for the husband for life, then to the wife for life, and afterwards for the younger children; but it was provided, that upon the husband's settling a certain real estate, he should become absolutely entitled to the 3,000*l.* In 1814 the husband assigned that sum to trustees for his wife, during their joint lives. In 1820 the estate was settled, and in 1823 the 3,000*l.* was paid to the trustees, who paid it over to the husband, taking his bond for the amount. The husband, by his will, directed his debts, including, as he declared, this bond, to be paid out of his real estate. Held, that, upon satisfaction of the wife's claim, the debt upon the bond had ceased. *Senhouse* v. *Hall*. vol. 14, p. 241
6. A testator devised his *E.* estate, subject to debts, &c., to his wife for life, with remainders over, and he devised his *C.* estate, subject to his debts, &c., to his wife absolutely. He afterwards mortgaged his *E.* estate. Held, on a deficiency of the personal estate, that the estates *E.* and *C.* ought to contribute rateably towards payment of the mortgage. *Middleton* v. *Middleton*. vol. 15, p. 450
7. Trust funds were lent to *A. B.* (the tenant for life), with the assent of his wife and children, who were entitled in

remainder. *A. B.* secured the repayment to the trustees by a life policy and a charge on his living. The trustees, for seventeen years, with the assent and concurrence of *A. B.*, paid over the surplus proceeds of the living to *A. B.*'s family, from whom he was living separate. Held, that the debt was not thereby satisfied. *Clack* v. *Holland.* vol. 19, p. 262

8. *A.*, in *January*, 1853, gave to *B.* his I O U for 65*l.* After *A.*'s death, *B.* having claimed the amount, his receipt for the amount was produced. *B.* swore, positively, that the amount had never been paid. The Court held, that it could not act on his unsupported testimony against the written evidence. *In re Farrow's Estate.* vol. 22, p. 400

9. A daughter was entitled to one-fifth of some property, and her father to the remainder. She resided with, and was maintained by, him, and he received the whole of the rents. After his death she, for the first time, claimed against his estate an account of one-fifth of the rents for twenty years. The Court concluded, that the common establishment had been maintained out of the mixed fund, and rejected the claim. *Smith* v. *Smith; Trinder* v. *Smith.* vol. 23, p. 554

10. Under a private act, the debts of C. were to be paid when "proved to the satisfaction of the Court." An unprofessional man had obtained a judgment, by confession, against *C.* for 3,860*l.* The only consideration shewn for it was services which ought properly to have been performed by a solicitor or a parliamentary agent. Held, that they must be held to have been performed gratuitously, unless a distinct agreement were made out. No agreement having been proved, the claim on the judgment was disallowed. *In re Carew's Estate Act; Ex parte Isaac.* vol. 30, p. 274

11. Claim of West India consignee ordered to be paid out of general assets. *Lyne* v. *Thompson.* vol. 30, p. 542

12. A father voluntarily paid a debt due to a bank from his son, and the father afterwards died insolvent. Held, that there was no debt from the son to the father's estate. *Graham* v. *Wickham.* (No. 2.) vol. 31, p. 478

13. A purchaser's right to have his deposit returned, held to constitute a sufficient debt to support a creditor's suit for administration. *Casson* v. *Roberts.* vol. 31, p. 613

DECLARATION OF TRUST.

[*See* STATUTE OF FRAUDS, VOLUNTARY TRUST.]

A. and *B.* were trustees of a will, and they and the widow were the executors. The widow, previous to her second marriage, transferred a sum standing in her sole name to *A.* and *B.*, upon certain trusts agreed on between her and her second husband. After the marriage, the trustees of *A.* and *B.* declared the trusts accordingly. The fund was part of the testator's assets, but the second husband had no notice of that fact. Held, that *A.* and *B.* held it on the trusts of the settlement, and not those of the will. *Cooper* v. *Wormald.* vol. 27, p. 266

DECLARATORY DECREE.

The testatrix directed her residuary estate "to be divided equally" between her two granddaughters on the youngest attaining twenty-one. She added, if they both marry a relation of *J. D.*, then the residue is to be divided between my nephews and nieces. The granddaughters having attained twenty-one and being still unmarried, the Court declined deciding the validity of the gift over, but held that they were entitled to payment, subject to any future question. *Hird* v. *Pinckney.* vol. 34, p. 273

DECREE.

[*See* DECLARATORY DECREE, DECREE (ALTERING), DECREE BY DEFAULT, DECREE (DRAWING UP), DECREE (ENROLMENT), ESTOPPEL, INQUIRIES, MINUTES, ORDER.

1. A suit was instituted, after a great lapse of time, and after the death of all the trustees of a will, to make the estates of such trustees liable for breaches of trust in the administration. Their representatives being personally ignorant of the matters, the Court refused to declare the liability in the first instance, but directed inquiries. *Kirkman* v. *Booth.* vol. 11, p. 273

2. A schoolmaster retained all the rents of a charity estate, after making small fixed payments to the almspeople. At the hearing, the Court held that he was not entitled to do so, and made a decree, referring it to the Master to inquire what the charity estate and property consisted of, and to settle a proper scheme for the management of the estates and property, and "for the application of the future rents and profits of the school." No account was directed against the schoolmaster. Held, that "future rents" meant all those subsequent to the decree, and the schoolmaster having died before the scheme had been settled, the Court, on a supplemental information, directed an account against his personal representatives of the rents received subsequent to the decree. *The Attorney-General* v. *Tufnell.* vol. 12, p. 35

3. On a bill, by first mortgagee against mortgagor and second mortgagee, the Plaintiff should prove the second mortgage, otherwise he can only take an inquiry at the first hearing. *Guardner* v. *Boucher.* vol. 13, p. 68

4. By the decree, arrears of maintenance were ordered to be paid out of a fund in Court, consisting both of *corpus* and rents of real estate, and it was referred to the Master to calculate interest on the arrears. Upon the matter coming before the Court upon the Master's report, Held, that it was not then competent for the parties to contend, that the arrears and interest were not payable out of the *corpus*, for the point must be considered settled by the prior decree. *Davies* v. *Browne.* vol. 14, p. 127
(See *Livesey* v. *Harding.* vol. 21, p. 227)

DECREE (ALTERING).

1. An accidental slip in a decree directing a sale, if certain persons "and the heir-at-law" should be found parties, corrected, on petition, by substituting the words "other than the heir-at-law." *Turner* v. *Hodgson.* vol. 9, p. 265

2. Costs had been ordered to be paid out of income instead of out of *corpus*. Held, that this did not preclude the matter being afterwards set right. *Sheppard* v. *Sheppard.* vol. 33, p. 129

3. A clerical error in the enrolment of a decree corrected by the Master of the Rolls. *Attorney-General* v. *Greenhill.* (No. 2.) vol. 34, p. 174

DECREE BY DEFAULT.

The Plaintiff filed a traversing order. The Defendant afterwards made default in appearing at the hearing. Held, first, that the Plaintiff was not entitled to take as of course, such decree as he could abide by, but must go through his case and take such decree as to the Court might appear just; and secondly, that service of the traversing order must be proved by affidavit. *Evans* v. *Williams.* vol. 6, p. 118

DECREE (DRAWING UP AND ENTERING).

1. Order held irregular, first, on the ground of its having been made and passed without due notice to the other parties to the cause; and secondly, as not specifying the evidence on which it was grounded. *Stubbs* v. *Sargon.* vol. 4, p. 90

2. Any proceedings, however inadvertently had, upon a decree or order not entered in the Registrar's book, are irregular and voidable. *Tolson* v. *Jervis.* vol. 8, p. 364

3. An order passed in *May*, 1837, was without order entered in *April*, 1845, held irregular. *Ibid.*

4. Observations as to the mode and forms of drawing up and passing decrees in the Registrar's office.
By consent the Registrar, in drawing up a decree, sometimes permits such alterations to be made in it as he believes the Court would sanction, and which are binding on the parties. *Davenport* v. *Stafford.* vol. 8, p. 503

5. Strict regularity requires that every word of a decree should be pronounced or dictated by the Court, and that, without a subsequent order of the Court, or at least without personal communication with the Judge, no alteration should be made. This became at first inconvenient, and at length impracticable, and now the Registrars, upon consent, allow alterations, as the admission of assets and striking out the direction to take accounts, which would have been necessary if assets had not been admitted. The admission is usually stated to have been made by the party's counsel. *Ibid.*

6. As to the mode of proceeding to be relieved from an admission in a decree fraudulently inserted, or consented to by mistake. *Ibid.*

7. In *November*, 1847, an order was made for an injunction, but was not drawn up. Upon an *ex parte* application in *April*, 1849, to have it drawn up, Held, that notice of the application must be given to the Defendant. *Bateman* v. *Wiatt.* vol. 11, p. 587

8. Rule of practice as to varying the minutes of decrees. The Registrar must first complete the minutes, and any party dissatisfied may then give notice of motion specifying the subject of complaint. *Prince* v. *Howard.* vol. 14, p. 208

9. A notice to draw up an order served one day for the next is regular. *In re Christmas.* vol. 19, p. 519

10. An order drawn up in the Registrar's office, in the absence of a Defendant, will not be set aside where no error is shewn. *Smith* v. *Acton.* (No. 2.) vol. 26, p. 559

DECREE (ENROLMENT).

On a motion, under the new Orders to enrol a decree, after a delay of more than six months, the Court granted the Respondents a delay of twenty-eight days. *Sherwin* v. *Shakespeare.* vol. 18, p. 527

DEED.

[*See* CONSTRUCTION, COVENANT, CROWN, DEED POLL, INDEPENDENT CONTRACT, MISTAKE, REFORMING DEED.]

1. Four deeds, though bearing date on four consecutive days, held to be necessarily connected together, and to form one transaction. *Ford* v. *Stuart.* vol. 15, p. 493

2. Every deed is to be taken most strongly against the grantor; but where the owner of an estate, on his marriage, settles it upon himself for life, with remainders over, and is therefore, in one sense, both grantor and grantee, his interest under the deed is to be construed as if a stranger had been the grantor. *Vincent* v. *Spicer.* vol. 22, p. 380

(*Secus* in case of grant by Crown. *Attorney-General* v. *Ewelme Hospital.* vol. 17, p. 366)

3. *Alteration* of deed by filling in blanks after the execution, held not to avoid it. *Adsetts* v. *Hives.* vol. 33, p. 52

4. Necessity of proving a deed by the attesting witness, where its validity and the payment of the consideration is contested by a person not a party to it. *Leigh* v. *Lloyd.* vol. 35, p. 455

DEED POLL.

A deed poll in the form of a power of attorney, held, in equity, to amount to an assignment, or to a covenant to assign. *Bennett* v. *Cooper.* vol. 9, p. 252

DEFENDANT.

[*See* ABSCONDING DEFENDANT, CO-DEFENDANT.]

DELAY.

[*See* ABANDONMENT, ACCEPTANCE OF TITLE, BREACH OF TRUST, WAIVER.]

1. Under a trust deed dated in 1806, and which was to operate during the life of the grantor, the trustee, after the performance of certain trusts, was to pay the surplus rents to the owner during his life. The owner died in 1816, the *trustee* died in 1818, and in 1828 a bill for an account was filed by the representative of the former against the representatives of the latter. The answer was filed in the following year, but no further proceedings were taken in the suit until 1839, when the cause was set down and was heard in 1840. Held, that no such laches existed as to bar the account. Held also, that, as regarded the lapse of time, the case was to be looked at in the same light now as at the filing of the bill. *Dickenson* v. *Lord Holland.* vol. 2, p. 310

2. Trustees, after acquiescence, restrained from legal proceedings against the tenant for life to recover the title-deeds, and receive the rents. *Denton* v. *Denton.* vol. 7, p. 388

2*a*. A bond-creditor proved his debt under a decree in a creditor's suit; he also claimed to have an equitable mortgage for the amount. The matter stood over to amend his charge, &c. He neglected to do so, and was reported a bond-creditor only. The estate was sold and the money paid into Court, and an apportionment directed. Nine years after, his personal representative presented a petition for liberty to go in and establish his mortgage, alleging that he had recently discovered that the charge had not been amended: it was dismissed with costs. *Cattell* v. *Simons.* vol. 8, p. 248

3. A decree, made in 1830, contained an admission of assets. A petition of rehearing, and a special petition to be relieved from the admission were presented, which the Court conceived to be grounded on a fraud committed. Held, in 1845, that, whether fraud and mistake had been committed, yet, considering the circumstances of the case, the length of time that had elapsed, the transactions that had taken place, the absence of documents, and the imperfections of the evidence, justice could not be done upon a mere rehearing of the cause as it stood in 1830. *Davenport* v *Stafford.* vol. 8, p. 503

4. A bill by a creditor, to obtain relief inconsistent with an order in a previous suit, was filed nearly twenty years subsequent to the date of the order, and prayed that the order might be reviewed. An application to rehear the former suit was refused, on the ground of laches, acquiescence, and length of time, but with liberty to renew the application at the hearing of the second suit. *Gwynne* v. *Edwards.* vol. 9, p. 22

5. A testator bequeathed to his widow a pecuniary legacy and a life annuity. She survived him twenty-eight years, and after her death, her executrix filed a bill for their recovery. No explanation was given of the circumstances, and no proof of any intermediate payment. The bill was dismissed on the ground of great laches. *Pattison* v. *Hawkesworth.* vol. 10, p. 375

(See *Parker* v. *Bloxam.* vol. 20, p. 295)

5*a*. A special injunction, on notice, to prevent the infringement of a patent refused, on the ground of delay, notwithstanding the Court had a strong impression in

favour of the Plaintiff's right. *Bridson* v. *Benecke.* vol. 12, p. 1

6. A testator, who died in 1796, gave his personal estate to his widow for life, with remainder to *B.* *B.* died in 1826, and the widow in 1849. The Plaintiffs then filed a bill against the representatives of the executors, to make them liable for investing in Five per Cents., instead of in Consols, &c. In 1837 the Plaintiffs had notice of the state of the investment. Held, that they were barred by laches and lapse of time. *Browne* v. *Cross.* vol. 14, p. 105

7. A party relying on his ignorance of facts, must shew, not only that he had not the information, but that he could not, with due diligence, obtain it.

The Plaintiff, a surety, sought to set aside a deed executed in 1848, on the ground that he had been released by a transaction between the principals in 1842, of which he was ignorant in 1848. It appeared that he had made inquiries in 1845, and was referred to persons who could give him the information, but neglected to do so until the end of 1849, when he obtained it. Held, that having in 1845 the means of acquiring the knowledge, he must be deemed to have had it in 1848, and his bill was dismissed. *Wason* v. *Wareing.* vol. 15, p. 151

8. *A.*, a merchant in *Cuba*, sold to *B.* part of a cargo shipped by him, and *C.* (who was *A.*'s correspondent in *England*), being informed thereof by *B.*, made no claim until four months afterwards, when he insisted on a paramount right over *B.* to the cargo. Held, that even assuming he had originally such right, his conduct had been such, that a Court of Equity would not allow him to enforce it against *B.* *Zulueta* v. *Tyrie.* vol. 15, p. 577

9. Laches not to be imputed to a vendor for delay in filing his bill, where to the last the purchaser insists on the contract, but disputes its effect. Lord *James Stuart* v. *The London and North Western Railway Company.* vol. 15, p. 513

10. A creditor of a banking firm held to have accepted the surviving partners as his debtors, and to have lost, by sixteen years' delay and his conduct, the benefit of a trust contained in the will of the deceased partner for payment of his debts out of his real estate. *Brown* v. *Gordon.* vol. 16, p. 302

11. Bill, after seventeen years, to set aside a purchase of the testator's estate by his executor, at an undervalue, dismissed, on the ground of the delay; although the sale, if recent, would have been set aside. *Baker* v. *Reed.* vol. 18, p. 398 (See *Shaw* v. *Neale.* vol. 20, p. 157)

12. Executors were to make an investment to produce an annuity of 100*l.* for *A.* for life, and the capital was then given to *A.*'s children. No investment having been made, the children were held entitled to 3,333*l.* Consols and not to 2,000*l.* sterling. On the death of *A.* in 1843, his children, on receiving 2,000*l.*, executed a release, which, after reciting that according to the trust 2,000*l.* had been set apart to answer the annuity, they released the first representative of the testator from all claims and demands. In 1854 the children instituted a suit to recover the amount of Consols which would be required to produce 100*l.* Held, that having regard to the situation in life of the Plaintiffs, the inaccuracy of the recitals, and the absence of professional assistance, they were not barred by lapse of time. *Aspland* v. *Watts.* vol. 20, p. 474

12*a*. Where a person named executor retained the whole assets in discharge of his debts, without proving the will. The Court, notwithstanding great lapse of time, granted relief by ordering a sale. *Smith* v. *Bakes.* vol. 20, p. 568

13. The testator directed the investment in the funds of sufficient to produce 40*l.* a year, and the dividends to be paid to his wife for life, and he bequeathed his general residue and the fund invested (after her death) to other persons. An investment was made in Five per Cents., which were reduced and produced less than 40*l.* Held, that the widow was entitled to have the deficiency made good out of the *corpus* of the fund, and the widow having received less than 40*l.* for thirty-three years. Held, that there had been no laches or acquiescence, the question now relating to the respective rights of parties to an existing trust fund. *Mills* v. *Drewitt.* vol. 20, p. 632

14. Delay and laches, on the part of the Plaintiff, are a good defence to a suit for specific performance, but they are inapplicable where the contract, though incomplete, has continued to be acted on, as where, under a contract for lease, possession is taken and rent paid for a series of years. *Sharp* v. *Milligan.* vol. 22, p. 606

15. Bill, by a foreign creditor to enforce a foreign judgment against the assets of the deceased debtor, dismissed on the ground of great delay in instituting the proceedings. *Reimers* v. *Druce.* vol. 23, p. 145

16. Parties claiming a portion of the residue held not barred, after twenty years' delay, either by the statute or by laches, the fund still existing as a trust fund, and all parties having acted under a misconception of rights. *Downes* v. *Bullock.* vol. 25, p. 54

17. Time is a bar in equity to stale demands, independent of the Statute of Limitations. *Harcourt* v. *White.* vol. 28, p. 303

18. Bill by tenant for life in remainder

against the representatives of a prior tenant for life, for an account of timber improperly cut, dismissed with costs, on account of the delay, the bill not having been filed until nearly twenty years after the death of the first tenant for life. *Harcourt* v. *White*. vol. 28, p. 303

19. The representatives of a deceased tenant for life, of renewable leaseholds, cannot, after the lapse of nearly twenty years from his death, maintain a claim to be recouped moneys expended for renewals in excess of what he was justly liable to pay. *Ainslie* v. *Harcourt*. vol. 28, p. 313

20. Delay of seven months in taking proceedings to set aside a sale, during which the purchaser was improving the property. Held, no bar to the Plaintiff's right to relief. *Pearson* v. *Benson*. vol. 28, p. 598

21. Parties neglected, for ten years, to prosecute a reference, and the Master reported that he was unable to dispose of the cause. On an application to the Court, the matter was transferred into chambers, and it was ordered that the reference should be prosecuted with effect within a month, the Court intimating, that, in default, the cause would be disposed of summarily. *Parkinson* v. *Lucas*. vol. 28, p. 627

22. Waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and, being so, neglects to enforce them. *Vyvyan* v. *Vyvyan*. vol. 30, p. 65

23. In 1807 a solicitor agreed to purchase an estate from his client, but the conveyance was not executed until 1823. The client changed his solicitor in 1826, and died in 1829, fully aware of his rights. A bill filed in 1859 by persons claiming through the client, to set aside the transaction, was dismissed on the ground of the great lapse of time, the Court holding that the Plaintiffs had no better title to relief than the client would have had if living. *The Marquis of Clanricarde and Others* v. *Henning*. vol. 30, p. 175

24. A suit to set aside a transaction entered into openly nineteen or twenty years previously cannot be sustained. *Marquis of Clanricarde* v. *Henning*. vol. 30, p. 175
(*Barwell* v. *Barwell*. vol. 34, p. 371
Mackintosh v. *Stuart*. vol. 36, p. 21)

25. Dissentient members were allowed to retire by resolutions at a general meeting, and upon terms which were assumed to be *ultra vires*. Held, that the transaction could not be questioned by the continuing shareholders, after twelve years' delay. *Brotherhood's case*. vol. 31, p. 365

26. A purchase of a reversionary interest by a brother from a sister at an undervalue set aside twenty years after the purchase and ten years and a half after the reversionary interest fell into possession, the influence of the brother continuing until a year before bill filed. *Sharp* v. *Leach*. vol. 31, p. 491

27. *A. B.*, a trustee, misapplied a trust fund of which he was tenant for life, and he died in 1834. *C. D.*, who then became entitled to it, died in 1858, having taken no proceeding to recover it. A bill, filed in 1863 by the representatives of *C. D.* against the representatives of the representative of *A. B.*, to recover the fund, was dismissed with costs, on the ground of the lapse of time. *Hodgson* v. *Bibby*. vol. 32, p. 221

28. *A.* was the administrator of an estate, to one-third of which each of his brothers, *C.* and *D.*, was entitled. In 1833 *A.* wrote to *B.* and *C.*, offering, in order to prevent the necessity of accounts and the probability of dispute, to pay each 1,000*l.* for his share. *B.* accepted the offer, and *C.* wrote to say that whatever *B.* determined "would meet with his approbation." *A.* and *B.* acted on the contract as complete, and *C.* never repudiated it or asked for any accounts or explanations. Upon the death of *B.*, seventeen years afterwards, *C.* insisted that there was no contract binding on him, and he claimed one-third of the estate. Held, that *C.* had acquiesced and was bound by the contract. *Cood* v. *Cood*. vol. 33, p. 314

29. Shareholders in a company sanctioned, or by their silence, at least acquiesced in, an arrangement which was *ultra vires*, intending, if it were favourable and profitable to themselves, to abide by it and insist on its validity; but if it proved unfavourable and disastrous, then to institute proceedings to set it aside. They complained of the acts as *ultra vires*, but relief was refused. *Gregory* v. *Patchett*. vol. 33, p. 595

30. On a bill to restrain a nuisance, a delay of six months in filing the bill, though important on an interlocutory application, held, no bar to relief by injunction at the hearing of the cause. *Turner* v. *Mirfield*. vol. 34, p. 390
(See *Gordon* v. *Cheltenham Rail. Co.* vol. 5, p. 229)

31. A delay from *May* to *December* in filing a bill for specific performance held not sufficient to deprive a vendor of his right to have the contract enforced. *Colby* v. *Gadsden*. vol. 34, p. 416

32. When a Plaintiff has delayed filing her bill for ten years, the time which has elapsed ought to preponderate in the Defendant's favour, where the evidence is conflicting, and the balance of it is even. *Hardwick* v. *Wright*. vol. 35, p. 133

33. A shareholder, who had taken shares on the faith of a prospectus, afterwards discovered that by the articles of association the objects of the company materially

differed from those stated in the prospectus. He subsequently dealt with the shares as owner, by attempting to sell them. Held, that he had acquiesced and could not afterwards repudiate them on the ground of the misrepresentation. *Re The Hop and Malt Exchange and Warehouse Company (Limited). Brigg's case.* vol. 35, p. 273

34. A delay of nine years in seeking to set aside a deed. Held, under the circumstances, accounted for. *Proctor* v. *Robinson.* vol. 35, p. 329

DELIVERY UP OF INSTRUMENTS.

1. A deed was declared void and ordered to be cancelled, held that a *reconveyance* was not necessary. *Hoghton* v. *Hoghton.* vol. 15, p. 278

2. Principles on which Courts of Equity proceed, in ordering the delivery up of instruments on which actions at law may be brought. *Cooper* v. *Joel.* vol. 27, p. 313

3. A written guarantee was given for moneys payable by instalments; though invalid, there was no invalidity on the face of it. In an action for the first instalment, the plaintiffs were *non prossed.* Held, that although there was a legal defence, the instrument ought to be cancelled, on the ground that future actions were contemplated, and that the future defence might fail from the loss of evidence. *Ibid.*

DEMURRER.

1. One of two tenants in common brought an action of ejectment against *A. B.* to recover possession of some property, but discovering (as the bill alleged) that there was an outstanding term, which the Defendant intended to set up, he filed a bill, praying a declaration of his right. Held, on demurrer, that from the frame of the record, the trustee of the outstanding term need not be a party. *Brookes* v. *Burt.* vol. 1, p. 106

2. After a demurrer the Plaintiff may, before it has been argued, obtain an order of course to amend; the only question is, what costs he is to pay, and that depends upon whether the demurrer has been set down or not. *Warburton* v. *The London and Blackwall Railway Company.* vol. 2, p. 253

3. General demurrer allowed to a bill on the ground of the vagueness and uncertainty of its statements. *Wormald* v. *De Lisle.* vol. 3, p. 18

4. One of the presumptive next-of-kin assigned the share to which he might become entitled in the personal estate of a lunatic who was then living, on trust to pay the costs, and any sums which might be advanced for the purposes of the trust, then to pay an annuity to the assignee, and afterwards to pay his debts. No creditor was party to the deed. The trustees made some payments in advance. On the death of the lunatic, the trustees of the deed filed a bill against the administrator and the assignor for payment of the assignor's share, alleging that the assignor was desirous that it should be paid to them. Held, that a general demurrer by the administrator could not be supported on these allegations, and *semble* that there was a sufficient consideration for the deed. *Hinde* v. *Blake.* vol. 3, p. 234

5. A demurrer is considered as set down, from the time when the order for setting it down is carried into the Registrar's office, and not from the time of its entry into the Registrar's book. *Egremont* v. *Cowell.* vol. 5, p. 617

6. A bill was, at the hearing, held defective for want of parties, and stood over. Another bill was filed, stating that at the hearing the sole Plaintiff was dead, and stating circumstances intended to remove the objection for want of parties, and praying the discharge of the former order and a revivor. A demurrer for want of parties was sustained. *Ibid.*

7. Where a suit abates after a demurrer has been filed, but before it has been heard, the Plaintiff and those representing him may file a bill of revivor and supplement for the purpose of having the demurrer disposed of; but the equity of the original bill being challenged by the demurrer, the Plaintiff in the second bill is not at liberty to claim the same, or additional relief by adding supplemental matter in corroboration of the original claim, and not required for the purpose of shewing by and against whom an order to revive may be properly obtained. *Bampton* v. *Birchall.* vol. 5, p. 330

8. Where a Plaintiff neglects to set down a demurrer within the twelve days, the Defendant is entitled to his costs of suit and demurrer, and an order for them will be made *ex parte. Mackenzie* v. *Claridge.* vol. 6, p. 123

9. A demurrer for want of equity and want of parties, succeeded only on the latter ground. No costs were given. *Allan* v. *Houlden.* vol. 6, p. 148

10. Practice as to filing, entering, setting down, and submitting to a demurrer. *Hearn* v. *Way.* vol. 6, p. 368

11. Where a Plaintiff obtains an injunction on affidavits, the Defendant is not wrong in meeting the case by affidavits on a motion to dissolve, although the point

might be determined shortly by filing a demurrer. *The Barnsley Canal Company* v. *Twibell.* vol. 7, p. 31

12. Liberty given *ex parte* to amend a clerical error in a demurrer, the twelve days for demurring not having expired. *Richardson* v. *Hastings.* vol. 7, p. 58

13. A Plaintiff may set down a demurrer for argument, without waiting for the Defendant to enter it with the Registrar. *Dalton* v. *Hayter.* vol. 7, p. 250

14. Whether it is necessary for a Defendant to enter a demurrer with the Registrar within eight days at all, *quære*. *Ibid.*

15. A Defendant neglected to enter his demurrer with the Registrar within eight days, the Court refused to overrule it on that ground. *Ibid.*

16. Where a demurrer is overruled, the Court will not give the Plaintiff the costs, if the statements of the bill are vague and uncertain. *Reed* v. *O'Brien.* vol. 7, p. 32

17. Upon overruling a demurrer, liberty was reserved to the Defendant to raise the same objection at the hearing. *Jones* v. *Skipworth.* vol. 9, p. 237

18. A Plaintiff having a demand against a firm of *Francisco Lizardi* & Co., filed a bill against *Helena Lizardi*, alleging that the firm was "represented by her." A demurrer was allowed. *Schneider* v. *Lizardi.* vol. 9, p. 461

19. A demurrer allowed to a bill filed by the agent duly authorized, and minister plenipotentiary of a foreign state, in respect of rights of such state, on the ground that the state was not properly represented. *Ibid.*

20. Upon the allowance of a demurrer, the question of costs and liberty to amend are in the discretion of the Court; and for the purpose of determining them, the Court, to some extent, has regard to the statements in the bill, though admitted only for the purposes of the demurrer. *Ibid.*

21. The allowance of a general demurrer puts an end to an injunction in the cause, though liberty be given to amend. *Schneider* v. *Lizardi.* vol. 9, p. 468

22. Upon general demurrer, the Court considering there was a fair point for decision at the hearing of the cause, overruled the demurrer, leaving the point open at the hearing. *Norman* v. *Stiby.* vol. 9, p. 560

23. Demurrer allowed to a bill on the ground of uncertainty. *Armitstead* v. *Durham.* vol. 11, p. 422

24. The Court will not determine, on demurrer, a point which cannot conveniently be decided by that form of proceeding. *Lord Leigh* v. *Lord Ashburton.* vol. 11, p. 470 (*Hope* v. *Hope.* vol. 22, p. 251)

25. Opinion of Sir *Anthony Hart* as to the inexpediency of a Defendant's demurring to a bill. *Zulueta* v. *Vinent.* vol. 13, p. 215

26. When a demurrer has been overruled, and an appeal from the order is pending, an *ex parte* order to amend is irregular; and a Plaintiff, having obtained such an order, after he had notice that the appeal had been set down, it was discharged with costs, and the amendments were expunged. *Ainslie* v. *Sims.* vol. 17, p. 174

27. Demurrer for multifariousness overruled. *Rump* v. *Greenhill.* vol. 20, p. 512

28. When there is a demurrer for multifariousness on the record, the Defendant may demur *ore tenus* for want of equity. *Ibid.*

29. In a bill against *B.* and *C.* the Plaintiff stated a circumstance, which was material in order to charge *C.*, not positively as a fact, but as an allegation made by *B.* A demurrer by *C.* was allowed. *White* v. *Smale.* vol. 22, p. 72

30. By an order giving leave to serve a bill upon a Defendant in *France*, he was to have six weeks after service of the interrogatories to plead, answer or demur, or to obtain time to make his defence to the suit. Held, that this did not deprive the Defendant of his right to demur alone to the bill within twelve days after his appearance, under the 37th Consolidated Order. *Gruning* v. *Prileau.* vol. 33, p. 221

31. A demurrer to part of the bill, without any answer to the rest, which is put in before the expiration of the time for filing interrogatories, is irregular; but whether it would be regular if accompanied with a voluntary answer to the rest of the bill, *quære*. *Rowe* v. *Tonkin.* vol. 35, p. 115

DEPOSIT.

[*See* DEPOSIT OF PURCHASE-MONEY, EQUITABLE MORTGAGE.]

DEPOSIT OF PURCHASE-MONEY.

Where there is no contract, or no contract which can be enforced, the purchaser is entitled to a return of his deposit. Thus, where one contracted by parol for the purchase of lands and paid a deposit, and afterwards declined to complete, it was held that his right to a return of the deposit constituted a sufficient debt to support a creditor's suit for administration. *Casson* v. *Roberts.* vol. 31, p. 613

DEPOSITIONS.

[*See* AFFIDAVIT, WITNESS.]

DESCENDANTS.

[*See* DESCRIPTION OF LEGATEE, NEXT-OF-KIN.]

DESCENT.

On her marriage a lady, seised in fee *ex parte maternâ*, executed a settlement in 1860, the ultimate limitations in which was, to the person who would, on her decease, have become entitled to the estate "in case she had died intestate and without having been married." Held, that under this limitation her heir *ex parte maternâ* was entitled. *Heywood* v. *Heywood.* vol. 34, p. 317

DESCRIPTION OF GIFT.

[*See* BONUS, INCOME, LEASEHOLDS (DEVISE OF), MONEY, RESIDUARY GIFT, STOCK, UNCERTAINTY.]

1. Generally, choses in action do not pass by a bequest of "goods and chattels" in a particular locality. *The Marquis of Hertford* v. *Lord Lowther.* (*Countess Zichy's case.*) vol. 7, p. 1
2. A testator, after devising a freehold to two and their heirs, and a leasehold to two others and the survivor, her heirs, executors, administrators and assigns for ever, proceeded:—"And I give all the rest of my household furniture, books, linen, and china, except as hereinafter mentioned, goods, chattels, estate and effects, of what nature or kind soever, and wheresoever the same shall be, at the time of my decease, unto *R.* and *S.*, their executors, administrators, and assigns in trust." He afterwards specifically bequeathed his ready money and various chattels. Held, by the Court of Exchequer, that the word "estate" thus circumstanced, did not pass real estate; but this Court not being satisfied, directed a case to the Common Pleas. *Sanderson* v. *Dobson.* vol. 10, p. 478
3. The word "estate," in a will, will *primâ facie* pass real estate, and the burthen of proof lies on those who contend the contrary. *Patterson* v. *Huddart.* vol. 17, p. 210
   (See *Coard* v. *Holderness.* vol. 20, p. 147)
4. A testator gave the residue of his property, whether freehold or personal, and wheresoever situate, to *A. B.* Held, that *copyholds* passed. *Reeves* v. *Baker.* vol. 18, p. 372
   (See *Quennell* v. *Turner.* vol. 13, p. 240)
5. A testator bequeathed some railway shares, "and all his right, title, and interest therein." Held, that moneys which he had paid in advance beyond the calls, passed to the legatee. *Tanner* v. *Tanner.* vol. 11, p. 69

5a. A devise of property in *Bullen Court*, *Strand*, and *Maiden Lane*, in the "county of *Middlesex*," held to pass property in *Bullen Court*, and in the *Strand*, and in *Maiden Lane*. *Gauntlett* v. *Carter.* vol. 17, p. 586
   (See *Armstrong* v. *Buckland.* vol. 18, p. 204)

6. A testator "gave" to his wife, for her use and benefit, "his leases, moneys, goods, furniture, plate, book debts, securities for money and all other property, of every description, that he might be possessed of." Held, that the real estate passed. *Re The Greenwich Hospital Improvement Act.* vol. 20, p. 458
7. A testator "gave, devised and bequeathed" his household goods, &c., "and everything he should die possessed of," to *A.* for life, and after her death, he "gave, devised and bequeathed the whole of his *effects* which might be then remaining unto and to the use of" the Plaintiff. Held, that the real estate passed. *Phillips* v. *Beal.* vol. 25, p. 25
8. Copyholds held to pass under a will by the words "moneys, property and effects," aided by the context. *Streatfield* v. *Cooper.* vol. 27, p. 338
9. A will commenced with a statement that it was a disposition of the testatrix's "estates, property and effects." The testatrix then gave and "bequeathed" her "moneys, property and effects" to her daughters, with an ultimate limitation to her own next-of-kin. The disposition pointed to personal estate, there was a direction to invest, the words "devise" and "heirs" were not used, and the expressions "legacy," "capital and principal" were applied to the gift. There being a trust for conversion. Held, that copyholds passed under the gift to the children. *Ibid.*
10. The "share" of one of several residuary legatees consists of what remains after all equities between him and the estate have been settled. *Willes* v. *Greenhill.* (No. 1.) vol. 29, p. 376
11. A farmer bequeathed "the whole of the consumable and other provisions, farming stock and effects, farming implements, growing crops and tenant right" in or upon his dwelling-house and farm at his death to trustees, to carry on the farm "until the 6th of *April* next subsequent to or following the time of his decease," and after that day to transfer "the consumable and other provisions, farming stock and effects," &c. then upon his house and farm to his son. He declared that his trustees were not to sell the "farming stock and effects" except in the ordinary course of management of the firm, and that the money produced thereby should fall into his residue. The testator died about four o'clock on the 5th *April*, at which time there was on the

farm, besides the ordinary farming stock, a large quantity of corn and wool of the last year's produce, and an excess of fat sheep and stock of the value of 3,314*l.* Held, that these passed to the son. *Harvey* v. *Harvey.* vol. 32, p. 441

12. A testator, by his will, said, "I give to my wife all my household furniture, plate," &c. "and other effects of the like nature, and all wines," &c. "which shall, at my decease, be *in or about any dwelling house* then occupied by me." Held, that, in construing the bequest, the sentence ought to be divided into two, and that the qualification as to his dwelling-house applied only to the latter part. Held, therefore, that it passed plate at the testator's bankers, family plate in the possession of the testator's father as tenant for life, and to which the testator was entitled absolutely in remainder, also the produce of family plate wrongfully sold by the tenant for life, and furniture, &c. deposited for safe custody at a warehouse. *Domville* v. *Taylor.* vol. 32, p. 604

13. Devise of all the freehold and real and leasehold estates in the counties of *Lincoln* and *Cambridge* (except such as I have hereinbefore disposed of), "and all the leasehold lands" at *S.*, in the county of *Dorset*, and elsewhere, which I can dispose of by this my will." Held, that it passed freeholds in *Norfolk* and elsewhere wherever situate. *Pinney* v. *Sir William Marriott.* vol. 32, p. 643

14. A person purchased a piece of land abutting on *O.* street on the east and *T.* street on the west. He built two houses, one in *O.* street and the other it *T.* street, and he divided the property into two portions. By his will he devised "all that his freehold estate situate in *T.* street. Held, that the whole property passed. *Harman* v. *Garner.* vol. 35, p. 478

15. By his will the testator gave "all that my messuage, partly freehold and partly leasehold," in *Cannon Street*, according to the nature and tenure thereof, respectively, in trust for his widow for life, or, as to the leaseholds, for so long as the term and interest in them should exist, with remainder over. After the date of his will, the reversion in fee of the leaseholds was purchased by, and conveyed to, the testator. Held, that the fee of the whole passed under the specific gift of "my messuage" at *C.*, and that the rest of the devise was descriptive. *Miles* v. *Miles.* vol. 35, p. 191

DESCRIPTION OF LEGATEE.

[*See* CHILDREN, LEGACY, MISDESCRIPTION, NEXT-OF-KIN, SERVANT.]

1. A testator gave a rent-charge to trustees, during the life of *A. B.* and her five daughters, in trust, to pay it to *A. B.* for life, and after her death, upon "trust for her said daughters, and the survivors and survivor, and while more than one should be living to be divided between them in equal shares." *A. B.* had five sons, and one daughter only. Held, that, subject to the life interest of *A. B.*, her only daughter was entitled to the rent-charge for life. *Lord Selsey* v. *Lord Lake.* vol. 1, p. 146

2. A testator devised a freehold estate to *A.* for life, and after his death he devised the same to be equally divided into four parts, between one child of *A.*, one child of *B.*, one child of *C.*, and one child of *D.*, for them to receive the rents and divide the money between them; and it was his desire that his estate should never be sold out of the family; and provided *A.*, *B.*, *C.* and *D.* should never have any lawful children, the testator's desire was that their parts should go to their next-of-kin. At the time of making the will and of the death of the testator *B.* only had a child, namely, a daughter, but after the testator's death *B.* had a son. At the death of *A.* there were children, both sons and daughters, of *A.*, *C.* and *D.* Held, first, that the gift to "one child" was not void for uncertainty; secondly, that the daughter of *B.*, and the eldest child of *A.*, *C.* and *D.* respectively, whether a son or daughter, who came into *esse* after the testator's death, were entitled; and thirdly, that under the words, the fee passed. *Powell* v. *Davies.* vol. 1, p. 532

3. A testator devised an estate to "*Elisabeth Abbott* (a natural daughter of *Elisabeth Abbott*, of *G.*, single woman, and who formerly lived in his service") for life, with remainder to her children. At the date of the will, there was no person answering this description; for though *Elizabeth Abbott*, who had formerly lived in his service, had a natural child, yet it was a son and not a daughter, and was named *John* and not *Elizabeth*: besides this, *Elisabeth* herself was not then a single woman, but had married one *Caddy*, and had a legitimate daughter *Margaret*. *John Abbott* being dead, the property was claimed, first, by the Plaintiff, on the ground that the gift was void for uncertainty; secondly, by the children of *John Abbott*; and, thirdly, by *Margaret*; but the Court held, under the circumstances, that the children of *John Abbott* were entitled. *Ryot* v. *Hannam.* vol. 10, p. 599

4. *A.*, the grandchild of *C.*, and *B.*, the widow of a child of *C.*, held, under the circumstances, entitled to a bequest made to *A.* and *B.*, widow, described as "children of *C.*" *Re Blackman.* vol. 16, p. 377

5. A testatrix having nephews, named *Robert*, *John*, *John Henry*, *Samuel* and

Thomas, appointed "*Robert*" her executor, and after a bequest to "*John Henry*," directed, that if he should not marry, it should be divided between "*Samuel*," "*John*," and *Mary*. *Thomas* claimed under the gift to "*John*;" but held, that he was not entitled, and that *John Henry* was meant. On appeal, however, the Court was divided. *Mostyn* v. *Mostyn*. vol. 17, p. 323

6. By a gift to "personal representatives," the executors and administrators are *primâ facie* meant. *Atherton* v. *Crowther*; *Deudon* v. *De Massals*. vol. 19, p. 448

7. Under a bequest to "personal representatives" of children, to take *per stirpes*. Held, first, that their executors and administrators were not entitled; and secondly (principally upon the terms of the gift over to the testator's "next-of-kin," if there should be no "representatives"), that the descendants of the children were intended. *Ibid.*

8. Gift to "my granddaughter *E. B.*" There were two of that name, one of them constantly visiting the testator and much noticed by him, and the other not. Held, that the former was entitled to the legacy. *Jefferies* v. *Michell*. vol. 20, p. 15

9. Under a devise, after the death of the survivor of several persons, to "*the eldest male lineal descendant of A.*" then living, this Court considered itself so fettered by the *dicta*, &c. of the House of Lords and of Lord *Eldon* and of the Judges in the case of *Oddie* v. *Woodford*, as to suggest a decree without argument, which excluded male descendants claiming through females, and gave preference to a grandson of *A.*, though younger in age, to a younger son of *A.*, who was in age the eldest male lineal descendant of *A.* The decree was made accordingly. *Lord Rendlesham* v. *Robarts*. vol. 23, p. 321

10. A testator gave 2,000*l.* in remainder to his sisters, except *A.*, and he then gave a legacy to *A.* He afterwards gave "to each of his sisters, namely, *B.*, *C.* and *D.*, 500*l.*" each, "and in case of death of either, their portion to go to the surviving sisters above mentioned. Held, that *A.* was not included among the surviving sisters. *White* v. *Wakley*. (No. 2.) vol. 24, p. 23

11. A testator bequeathed nineteen guineas each to the "surgeon" and resident "apothecary" of the *S.* dispensary, or any who might hold the like situation at his decease. There were two surgeons and no resident apothecary, but a "dispenser." Held, that the three were entitled to nineteen guineas each. *Ellis* v. *Bartrum*. (No. 2.) vol. 25, p. 109

12. A testator devised an estate to one for life, and afterwards to be sold, and the proceeds equally divided between "his surviving nephews and nieces." He had, in another part of his will, designated *A.* and *B.* (who were really his great-nephew and great-niece), as his nephews and nieces. Held, that *A.* and *B.* did not participate in the proceeds. *Thompson* v. *Robinson*. vol. 27, p. 486

13. A testator referred to his five daughters as the wives of five persons he named, and he gave life interests in separate legacies to his five daughters, and afterwards to their respective husbands. Held, that the latter gift was confined to their then existing husbands. *Franks* v. *Brooker*. vol. 27, p. 635

14. By his will, a testator gave his real and personal estate to trustees on trusts for his sister. By a codicil he gave a legacy to his eldest nephew, whom he called his "heir-at-law," and he directed that the codicil should not give to his trustees, for the benefit of his sister, any after-acquired freeholds or copyholds; but that the same, as to freeholds, should descend to his heir-at-law, and as to customary estates, to his customary heir. At the testator's death, his sister was his heiress at law and customary heir. Held, that she was not excluded from taking by descent the after-acquired copyholds. *Gould* v. *Gould*. vol. 32, p. 391

15. Bequest to the testator's grandchildren and nephews and nieces. The testator had no brothers and sisters, and therefore no nephews and nieces. Held, that the nephews and nieces of his wife were entitled. *Hogg* v. *Cook*. vol. 32, p. 641

16. A testator, having four nephews and a niece, children of his brother *Richard*, bequeathed some Stock "in trust for his four nephews and niece, children of my brother *Richard*, namely, *Robert*, *Richard*, *Francis* and *Margaret*" (omitting *Thomas*, the fourth nephew). Held, that *Robert* could not be admitted to participate in the bequest. *Glanville* v. *Glanville*. vol. 33, p. 302

17. A testator directed an estate to be sold on the decease of his sister and three others, and the produce paid to such persons as should then "be the nearest in blood to him as descendants from his great grandfather, *J. S.*" The testator and his sister, both advanced in years, were the only lineal descendants of *J. S.* Held, that the collateral descendants of *J. S.* were entitled. *Best* v. *Stonehewer*. vol. 34, p. 66

18. The testator directed some property to be divided, at a future period, amongst the then surviving children of *John* and *Sarah Worn* and *Catherine Hales*. *Sarah* was a sister of the testator, but *Catherine* was a stranger, and *Sarah* had children, but *Catherine* was a spinster at the date

of the will. Held, that *Catherine*, personally, and not her children, was entitled to participate. *Stummvoll* v. *Hales*. vol. 34, p. 124

DESCRIPTION OF PLAINTIFF.

1. Where a Plaintiff wilfully misrepresents his place of residence on the record he will be ordered to give security for costs, but this rule does not extend to cases where it is done innocently and from mere error. *Simpson* v. *Burton*. vol. 1, p. 556
2. When, at the time of amending his bill, the Plaintiff has changed his residence, it should be stated by amendment; and this may be done notwithstanding the rule that subsequent facts are the proper subject of supplement and not of amendment. *Kerr* v. *Gillespie*. vol. 7, p. 269

DESIGN.

[*See* COPYRIGHT OF DESIGN.]

DEVASTAVIT.

[*See* BREACH OF TRUST, CONVERSION OF ASSETS, EXECUTOR, INTEREST.]

1. Part of a testator's assets consisted of a promissory note. The executor, though requested by the parties interested so to do, neglected to get it in; and about two years afterwards it was lost by the insolvency of the debtor. Held, that the executor was personally liable. *Caney* v. *Bond*. vol. 6, p. 486
2. About a year after a testator's death, the executrix brought an action against a debtor and recovered judgment, but she did not issue execution until a year after, when a bankruptcy ensued and the debt was lost. The executrix was empowered "to compound or allow time for the payment of any debt." Held (under the particular circumstances), that she was not liable for a *devastavit*. *Ratcliffe* v. *Winch*. vol. 17, p. 217
3. An executor cannot carry on the trade of his testator, except for the purpose of winding it up; but he may, and in some cases is bound, to complete contracts entered into by his testator. *Collinson* v. *Lister*. vol. 20, p. 356
4. When part of the testator's property is invested on mortgage, the executor is justified in making such further advances as may be absolutely necessary to secure the first advance, *semble*. It would be dangerous to lay down any rule which would prevent the executor from exercising a *bonâ fide* discretion in such case, or even charge him with a *devastavit* in case the result should disappoint his expectations. In case of loss, however, the *onus* lies on him of shewing that he exercised due caution. *Collinson* v. *Lister*. vol. 20, p. 356
5. The husband of an executrix or administratrix is liable for all the assets received or *devastavits* committed by himself or by his wife during the coverture, and his estate remains liable after his death. The husband of an executrix, who was liable for a breach of trust, made his wife and two others his executrix and executors. They possessed themselves of all his assets. Held, that the husband's liability was not satisfied by the circumstance of his widow uniting in herself the two characters; and in a suit to charge the husband's assets, an inquiry as to the amount of such assets received by her was refused, and it was held, that her legal personal representative was not a necessary party. *Smith* v. *Smith*. vol. 21, p. 385
6. By the 4 & 5 *Will. & M.* c. 20, judgments not docketed were not to have any preference against executors, &c. in administration of estates. The 2 & 3 *Vict.* c. 11, closed the docket. Held, that the old law was thereby revived, and the administrator had committed a *devastavit* by paying a simple contract debt before a judgment debt, even though he had no actual notice of the latter. *Fuller* v. *Redman*. (No. 1.) vol. 26, p. 600
7. An executrix allowed 190*l*. (part of the estate) to remain at a banker's in her name as executrix. A loss occurred by their bankruptcy a year after the testator's death. Held, that she was not personally liable for the loss. *Swinfen* v. *Swinfen*. (No. 5.) vol. 29, p. 211

DEVISE.

[*See* ABSOLUTE INTEREST, CHARITY, CONSTRUCTION, DESCRIPTION OF GIFT, DESCRIPTION OF LEGATEE, &c., LEASEHOLDS (DEVISE OF), LIFE ESTATE, LIMITATION (WORDS), REFERENCE (GIFT BY), WILL.]

DILAPIDATIONS.

1. The claim of an incumbent against the representatives of his predecessor, for dilapidations, will be paid out of equitable assets, *pari passu* with other creditors, though at law it would be postponed to simple contract creditors. *Bisset* v. *Burgess*. vol. 23, p. 278
2. Covenant by farm tenant "well and substantially" to repair and keep in "good substantial repair," and so "well and substantially repaired" to yield up at the end of the term. Held, that the tenant was bound to give up the premises in as good a state of repair as when he

took possession, and that they must be inferred to have been then in a tenantable state. The landlord having become changed during the term, and a claim for dilapidations being now made by the existing landlord. Held, that the tenant was entitled to an inquiry as to the state of repair when the present landlord's title accrued. *Brown* v. *Trumper*. vol. 26, p. 11

DIRECTORS.

[*See* BORROWING POWERS, COMPANY, ULTRA VIRES.]

1. Directors of a public company are trustees for the shareholders, and their private interests must yield to their public duty whenever they are conflicting. *In re Cameron's Coalbrook, &c. Railway Company, Ex parte Bennett.* vol. 18, p. 339
2. A person, employed by directors of a company, is not bound to inquire whether they are acting within the limits of their power. *Green* v. *Nixon*. vol. 23, p. 530
3. Directors allowed a judgment to go by default against a public company, which the Plaintiff proceeded to enforce against the shareholders. Held, that the shareholders could, in the absence of collusion and concert, and as against the creditor, question in this Court the validity of the original debt, or discuss whether the action could have been successfully resisted by the company. *Ibid.*
4. The Plaintiff agreed to sell a colliery to a joint-stock company for 8,000*l.* in paid-up shares; but there was a private arrangement, not communicated to the shareholders, that 2,500*l.* of these should be given as a bonus to the directors. Held, that the Plaintiff could not sustain a bill for specific performance. *Maxwell* v. *The Port Tennant Patent Steam Fuel and Coal Company*. vol. 24, p. 495
5. The directors of a company are trustees, and they have attached to them, for the benefit of the shareholders, all the liability and duties which attach to a trustee and agent. If, therefore, a director enter into a contract for the company, he can derive no personal benefit from it. *The Great Luxembourg Railway Company* v. *Sir William Magnay*. (No. 2.) vol. 25, p. 586
6. A railway company furnished a director with a large sum of money, to enable him to purchase the "concession" of another line. He purchased it, as it turned out, from himself, he being the concealed owner of it. Held, that the transaction could not stand, but that the company must adopt or repudiate the transaction altogether; and the company having sold the concession pending a suit impeaching the transaction: Held, also, that they could have no relief, either as to the application of the money or otherwise. *The Great Luxembourg Railway Company* v. *Sir William Magnay*. (No. 2.) vol. 25, p. 586
7. Directors of a company, on the transfer of its business to another company, received from the latter a large sum for compensation, the particulars of which they withheld from their members. Held, that they were trustees of the money for the members, and they were ordered, on an interlocutory application, to pay it into Court. *Gaskell* v. *Chambers*. (No. 3.) vol. 26, p. 360
8. The directors of a loan company were empowered to borrow money, but directors "who were concerned in or participated in the profits of any contract with the company" vacated their offices. The chairman lent money to the company at high interest, which was afterwards lent out at a profit. Held, that this was warranted by the rules. *Bluck* v. *Mallalue*. vol. 27, p. 398
9. Discounting the bills of a director is a lending of money within a clause prohibiting loans to shareholders. *Ibid.*
10. When directors of a company have no power to borrow, a person lending money to the company cannot enforce payment of it against the company unless it has been *bonâ fide* applied to the purposes of the company. *Troup's case*. vol. 29, p. 353
11. Where directors of a public company have entered into an informal agreement, within the limits of their power, it is in equity binding on the company, and this Court will give effect to it. *In re Strand Music Hall Company (Limited)*. vol. 35, p. 153
12. A large remuneration to the projector and directors of a company, if openly provided for by the articles of association, cannot afterwards be questioned by shareholders. *In re The Anglo-Greek Steam Navigation and Trading Company (Limited)*. vol. 35, p. 399
13. Observations as to the impropriety of directors receiving gifts from the projector out of the promotion moneys received by him from the company. *Ibid.*
14. A benefit received by a director from persons employed by the company, or arising from the transactions of the company, cannot be supported. *Ibid.*
15. It is not only the duty of directors of companies to be ready, at all times, to explain everything to shareholders, but also that they shall be engaged in no transactions connected with the company from which they can derive a profit which is not openly known to, and acquiesced in, by all the shareholders. *Ibid.*

DISCHARGE OF ORDER.

1. An order "to discharge an irregular order with costs," carries the costs of the application to discharge it. *West* v. *Smith.* vol. 3, p. 492
2. An application made at the Rolls, in a V.-C.'s cause, to discharge an order to sue in *formâ pauperis*, obtained of course at the Rolls, can only be founded on irregularity; if merits are relied on, the application must be made before the V.-C. *Robinson* v. *Milner.* vol. 5, p. 49
3. An appeal was made to the Lord Chancellor against an order of the Master of the Rolls. What was done did not appear, further than that the Lord Chancellor either decided it on the merits, or refused to hear it, on the ground that the Defendant was in contempt for nonpayment of costs. A motion was afterwards made to the Master of the Rolls to discharge the order, but he held he had no jurisdiction to interfere. *Oldfield* v. *Cobbett.* vol. 8, p. 292

DISCLAIMER.

1. In a suit by a second mortgagee, to foreclose and redeem, certain Defendants, including the provisional assignee of the insolvent mortgagor, disclaimed. They were, however, brought to a hearing, and it then appearing that there was insufficient to pay the first mortgage, the Plaintiff declined taking the account. The bill was dismissed as against the disclaiming Defendants, *without* costs, and the first mortgagee alone was held entitled to his costs. *Gibson* v. *Nicol.* vol. 9, p. 403
2. In a suit for foreclosure, a party interested in the equity of redemption disclaimed and stated, he did not, and never did, claim any interest. The bill being brought to a hearing, Held that he was not entitled to his costs. *Buchanan* v. *Greenway.* vol. 11, p. 58
3. A trustee put in a disclaimer to a bill of foreclosure, and set out a correspondence to shew that he had always refused to act. Held, that he was entitled to the whole costs, for the Plaintiff might have shewn by the bill that a simple disclaimer was sufficient. *Benbow* v. *Davies.* vol. 11, p. 369
4. The general costs of a suit being reserved, the costs of two disclaiming Defendants were ordered to be paid by the Plaintiff without prejudice to the question by whom and out of what fund they ought eventually to be borne. *Jones* v. *Powell.* vol. 13, p. 433
5. Pending a proceeding in *sci. fa.* to repeal a patent, the patentee disclaimed a part, under the *5 & 6 Will. 4*, c. 83. The prosecutor still proceeded, and ultimately failed. Held, that he ought to pay the costs subsequent to the disclaimer. *The Queen* v. *Mill.* vol. 14, p. 312
6. The assignees of a bankrupt mortgagor who had no assets disclaimed, and said, that they would have disclaimed before suit, if any application had been made to them. Held, nevertheless, that they were not entitled to costs. *Ford* v. *White.* vol. 16, p. 120
7. Rules as to the right of a disclaiming Defendant to costs, in foreclosure suits. *Ford* v. *Lord Chesterfield.* vol. 16, p. 516
8. If a disclaiming Defendant shews that he never had and never claimed any interest, or, having an interest, that he had disclaimed or offered to disclaim before the institution of the suit, he is entitled to his costs. But if, having an interest, he neither disclaims nor offers to disclaim till he puts in his disclaimer, he is not entitled. *Ibid.*
9. These rules prevail, though the Plaintiff never applied to the Defendant to disclaim prior to the institution of the suit. *Ibid.*
10. In a foreclosure suit by second mortgagee, a subsequent judgment creditor, by his answer, disclaimed all interest, and stated, that he had never been applied to by the Plaintiff to disclaim, previously to the filing of the bill; but he did not add, that if he had been so applied to, he would have disclaimed, or that he had never claimed an interest. Held, that he was not entitled to his costs from the Plaintiff. *Ibid.*
11. Where, in consequence of a replication being filed, a disclaiming Defendant is compelled to go into evidence in support of his answer, the Plaintiff must pay his costs, but not otherwise. *Ibid.*
12. The captain of a ship served a notice on the trustees of the docks, in which the cargo of the ship was being discharged, not to suffer its removal till the freight was paid, and wrote to the owners of the ship to inform him that he had stopped the cargo till the wages of himself and the seamen had been paid. In a suit between the owners and the mortgagee of one of them, the captain was made a party, and did not, by his answer, disclaim. The Chief Clerk found that certain sums were due to him in respect of wages, but that other sums claimed were not due. Held, that the Plaintiff was justified in making the captain a party, and that the latter was justified in not disclaiming, and was therefore entitled to his costs. *Alexander* v. *Simms.* vol. 20, p. 123
13. Parties are not justified, by remaining passive, to prevent the rightful owners obtaining possession of their property, but if called on to do an act, involving no risk or responsibility, which is neces-

sary to enable the true owner to obtain his property, they are bound to do it. If therefore their refusal renders an application to the Court necessary, they will be made to pay the costs. *In re Primrose.* vol. 23, p. 590

14. Trust funds stood in the Bank books in the name of a bankrupt and another as trustees. The assignees made no claim to it, but refused to sign a paper stating so, and which was necessary, by the rules of the Bank, to obtain a transfer into the names of a new trustee. The Court held such conduct unjustifiable, and that the assignees ought to pay the costs occasioned. *Ibid.*

15. A Defendant who disclaims in a suit cannot, in that suit, maintain a claim against his co-Defendant in respect of the right disclaimed. *Jolly* v. *Arbuthnot.* vol. 26, p. 283

16. In a suit for foreclosure, the assignees of a mortgagor disclaimed, and offered to be dismissed without costs. The Plaintiffs having brought them to a hearing, were ordered to pay their costs subsequent to the disclaimer. *Davis* v. *Whitmore.* vol. 28, p. 617

17. A devisee, being made a Defendant, by his answer said that he had never claimed the gift, and always disclaimed and did disclaim it, and he offered to be dismissed with costs. He was brought to the hearing. Held, that he was not entitled to his costs. *Furber* v. *Furber.* vol. 30, p. 523

18. A judgment creditor, whose debt had been satisfied but who had not entered satisfaction on the rolls, was made a Defendant to a foreclosure suit. He disclaimed. Held, that he was not entitled to his costs, in consequence of his negligence in not entering up satisfaction of his judgment. *Thompson* v. *Hudson.* vol. 34, p. 107

19. The rule as to the costs of a disclaiming Defendant applies to a disclaiming heir-at-law. *Gray* v. *Adamson.* vol. 35, p. 383

DISCOVERY.

[*See* ANSWER, CROSS BILL, DISCOVERY (PRIVILEGE), PRODUCTION OF DOCUMENTS, SUFFICIENCY OF ANSWER.]

1. The general rule is, that a Defendant is bound to discover all the facts within his knowledge, and to produce all documents in his possession, which are material to the case of the Plaintiff. However disagreeable it may be to make the disclosure,—however contrary to his personal interests,—however fatal to his claims, he is compelled to set forth, on oath, all he knows, believes, or thinks in relation to the matters in question. *Flight* v. *Robinson.* vol. 8, p. 22

2. The Defendant, *ex parte*, and in the absence of the trustees, alleged to be unknown, obtained under the Court, and by means of the Trustee Act, a conveyance of the legal estate. The Plaintiff insisted, that the Defendant had no title to the estate, and that the conveyance had been fraudulently obtained. Held, that the Defendant was bound to give a discovery of all matters tending to prove that the order had been improperly obtained, but that the Plaintiff was not entitled to a discovery of the particulars of the Defendant's title to the estate. *Stainton* v. *Chadwick.* vol. 13, p. 320

3. Where, at the hearing, liberty is given to a party to establish his right at law, he must obtain the leave of the Court to enable him to file a bill of discovery (*per Sir C. C. Pepys and Lord Langdale*). *Few* v. *Guppy.* vol. 13, p. 457

4. Where an action is brought in the name of a party having the legal title, a bill of discovery in aid of the defence must be filed against that party alone (*per Lord Lyndhurst*). *Ibid.*

5. The Plaintiff's right to discovery and to production rests on the same principle. *Swinborne* v. *Nelson.* vol. 16, p. 416

6. A defendant who submits to an answer must answer fully: he cannot by denial of the Plaintiff's title escape answering. Discovery of title-deeds and of professional communications forms an exception. *Ibid.*

7. Though a party may now at law examine his opponent, he is still entitled to a discovery in equity in aid of his case at law. *Lovell* v. *Galloway.* vol. 17, p. 1

8. The Plaintiffs and Defendants were partners in a colliery, the lease of which expired in 1846. The Defendants gave notice to dissolve at the expiration of the old lease, and they obtained a renewal to themselves. The Plaintiffs insisted that they were entitled to participate in the new lease, and stated facts in support of that equity. The Defendants, by answer, *denied the Plaintiffs' right*, and *declined to set out the accounts* of the subsequent profits of the colliery, or to produce the documents subsequent to the dissolution, which, they said, did not tend to shew the Plaintiffs' right to a decree, until the Plaintiffs had established some right in the new partnership. Held, that they were bound to answer and to produce. *Clegg* v. *Edmondson.* vol. 22, p. 125 (*Swinborne* v. *Nelson.* vol. 16, p. 416)

9. Where the Defendant, neither pleading nor demurring, answers the bill, he must answer fully: but there are exceptions to the rule, as where the Defendant sets up a distinct and independent title in himself, which, if established, will destroy

the Plaintiff's title. In that case, he is not bound to produce or set out any documents which he swears establish his own title, and do not establish that of the Plaintiff. Cases where the discovery would subject the Defendant to penalties and forfeitures are also exceptions to the rule. *Clegg* v. *Edmondson.* vol. 22, p. 125

10. The expression, "tending to make out the Plaintiff's title," means, his title to the relief which he seeks by his bill. *Ibid.*

11. Unless a Defendant plead to the discovery, he is bound to answer fully. *Reade* v. *Woodroffe.* vol. 24, p. 421

12. When substantial information is given by the answer, the Court discourages exceptions for insufficiency, and will not require minute and vexatious discovery. *Ibid.*

13. The bill required discovery and accounts from *July*, 1850, of dealings between the Plaintiffs and Defendants. A Defendant, by his answer, stated that they had terminated, by consent, in *February*, 1851, and he refused to set out the subsequent matters. Held, that he was bound to do so. *Ibid.*

14. The Plaintiff complained that the Defendant had sold, under the Plaintiff's name, sewing machines which had not been manufactured by him, and he sought a discovery of all the machines sold by the Defendant, the price, the profit, the names of the purchasers and other particulars. The Defendant refused to answer, saying that he would thereby disclose the names of his customers and the secrets of his trade. Held, that he was bound to answer. *Howe* v. *M'Kernan.* vol. 30, p. 547

15. A bill was filed by the next-of-kin against *A. B.*, the administratrix, and *C. D.*, who was the partner and executor *de son tort* of the intestate, for the administration of the estate and to take the partnership accounts. Held, that *C. D.*, who had not demurred, was bound to set out the partnership accounts. *Leigh* v. *Birch.* vol. 32, p. 399

16. A Plaintiff sought to set aside a lease, and to obtain the *mesne* profits. The Defendant, the assignee of the lease, insisted on its validity, and that he was a purchaser for valuable consideration without notice. Held, that the Defendant was bound to answer as to the amount of rents and profits, the particulars of his underletting and of his receipts, and what charges he had created. *Robson* v. *Flight.* (No. 1.) vol. 33, p. 268

DISCOVERY (PRIVILEGE).

1. A Defendant is not bound to discover the principal fact, or any one of a long series or chain of facts, which may contribute to establish a criminal charge against himself, and he cannot waive this right by any agreement. *Lee* v. *Read.* vol. 5, p. 381

2. Pending the proceedings in the cause, the Plaintiff indicted the Defendants in respect of the same transactions, the time for answering was extended until after the trial of the indictment. *Ibid.*

3. Where a Plaintiff, by his bill, seeks a discovery of matters which might subject the Defendant to a criminal prosecution, and also seeks other legitimate discovery, it is his duty to separate the two; for if they be so mixed up or connected, that either by inference or exclusion they may lead to a disclosure which might subject the Defendant to prosecution, he is not bound to answer any portion of it. *The Earl of Lichfield* v. *Bond.* vol. 6, p. 88

4. A solicitor is not bound to disclose professional communications, which took place between himself and his client, although no litigation existed or was contemplated at the time. *Carpmael* v. *Powis.* vol. 9, p. 16 (See *Holmes* v. *Baddeley.* vol. 6, p. 521)

5. The same rule applies to similar communications between the solicitor and a third party, who acts as the medium of communication between the solicitor and client. *Ibid.*

6. A solicitor demurred to interrogatories seeking a discovery of communications between him and *A. B.*, stating, that in such communication "he considered and treated *A. B.*, as representing his client, and as being the medium of communication between him and his client." Held, that he had brought the case within the rule as to protection. *Ibid.*

7. A bill sought, as against stock brokers, a discovery of certain sales of stocks and shares. The Defendants, by their answer, stated that some of them were illegal time bargains, and refused to give a discovery of any of the transactions. Held, that they were bound to answer as to the legal matters. *Fisher* v. *Price.* vol. 11, p. 194

8. Privilege as to cases and opinions anterior to any litigation. *Penruddock* v. *Hammond.* vol. 11, p. 59

9. A Defendant, by his answer, stated, that he was advised that the cases and opinions stated in the schedule, were privileged. Held, that the privilege was not sufficiently shewn by the answer; but liberty was given to supply the omission by affidavit. *Ibid.*

10. When a Defendant incurs no penalties, he cannot resist a discovery by alleging the illegality of the transaction. *Williams* v. *Trye.* vol. 18, p. 366

11. To a bill to set aside a conveyance as fraudulent, under the statute of *Elizabeth*, the Defendant, by his answer, refused to

answer any portion of it, on the ground that the statute imposed a *forfeiture* and six months' imprisonment. After the time for excepting had expired, the Plaintiff amended his bill, by striking out the allegations of fraud, and by attempting to remove the objections, and he again filed the interrogatories. The Defendant, by answer, again insisted on the objection, and that the proceeding of the Plaintiff was a mere snare, and he refused to answer any portion of the bill. The Court came to the conclusion, that the two bills were substantially the same, and the answer to the first being deemed sufficient, the Defendant was not bound to answer the second. *Wick* v. *Parker*. vol. 22, p. 59

12. A solicitor, in the presence of his client, objected to produce a document, on the ground of professional confidence. The Court being of opinion that the document was not privileged as regarded the client himself, ordered its production. *In re The Cameron's Coalbrook, &c. Railway Company*. vol. 25, p. 1

13. A solicitor declined answering some interrogatories, on the ground that he had obtained all his information "whilst acting as the solicitor" of his co-Defendant. Held, that he had not brought himself within the rule as to professional privilege. *Thomas* v. *Rawlings*. vol. 27, p. 140

14. A solicitor said he had obtained his information "either as a creditor or as the solicitor" of his client. Held, that this statement must be taken most strongly against the solicitor, and that he was bound to give the discovery. *Ibid.*

15. Professional privilege is limited to communications of a solicitor with his client and with those persons necessarily employed under the solicitor; it does not extend to communications between a solicitor and third parties. *Ford* v. *Tennant*. (No. 2.) vol. 32, p. 162

16. In a dispute between *A.* and *B.*, the solicitor of *A.* had communications with *B.* Held, that they were not privileged. *Ibid.*

17. Upon a bill of discovery in aid of an action at law the Plaintiff is only entitled to a discovery of such matters as make out his own title, and cannot compel a discovery of the particulars of his adversary's title and how he makes it out. *Ingilby* v. *Shafto*. vol. 33, p. 31

DISCRETIONARY TRUST.

[*See* INVESTMENT, POWER, PRECATORY TRUST.]

Bequest to trustees to apply the income or principal for the benefit of *S. J.*, widow, and of her three children, in such proportions, &c. as the trustees, in their absolute discretion, should think proper; but in case *S. J.* married again, her interest to cease. The trustees declined to act. Held, that the fund must be divided between *S. J.* and her three chidren. *Izod* v. *Izod*. vol. 32, p. 242

DISENTAILING DEED.

The purchase-money for lands taken by a railway company was paid into Court. After the land had been conveyed to the company, an order was made for payment of the purchase-money to the tenant in tail, without his executing a disentailing deed. *In re the South-Eastern Railway Company*. vol. 30, p. 215

DISMISSAL BY PLAINTIFF.

[*See* DISMISSAL FOR WANT OF PROSECUTION, STAYING PROCEEDINGS.]

1. A bankrupt Plaintiff's assignee allowed to dismiss a supplemental bill without costs. *Thompson* v. *Thompson*. vol. 7, p. 350

2. Before appearance, a Plaintiff may dismiss his bill without costs. *Ibid.*

3. A demurrer being overruled with costs, the Defendant appealed. The Plaintiff afterwards obtained an order of course to dismiss his bill with costs, suppressing the fact of the allowance of the demurrer; it was discharged for irregularity. *Lewis* v. *Cooper*. vol. 10, p. 32

4. A decision, on the authority of which a suit had been instituted, being overruled, the Plaintiff offered to dismiss his bill without costs. Held, that this was no answer to a motion to dismiss for want of prosecution, and that the Plaintiff must either proceed or have his bill dismissed on the usual terms. *The Lancashire and Yorkshire Railway Company* v. *Evans*. vol. 14, p. 529

5. Where a suit becomes nugatory by matters subsequent, the Court, upon motion, has jurisdiction to dismiss it without costs. *Sutton Harbour Improvement Company* v. *Hitchens*. vol. 15, p. 161

6. A suit having been instituted on the authority of a reported case, which was afterwards reversed, the Court, after looking simply into the record, dismissed it without costs. *Ibid.*

7. The Court cannot go into the merits on a motion to dismiss, nor can it make a Defendant pay the costs of a Plaintiff where the bill is dismissed. *Ibid.*

8. A decree was made in a suit for the administration of a mortgagor's estate. The mortgagee afterwards filed a foreclosure bill, but subsequently obtained full payment in the administration suit. Held, that he was entitled to stay pro-

ceedings in his own suit and to have the costs of it. *Brooksbank* v. *Higginbottom.* *Bent* v. *Buckley.* vol. 31, p. 35

DISMISSAL FOR WANT OF PROSECUTION.

[*See* ABATEMENT, REVIVOR, SECURITY FOR COSTS.]

1. On the 26th of *April*, 1838, the Plaintiff undertook, before replication, to speed (see the terms); on the 8th of *May* he filed a replication, but he neither sued out a commission nor did he take any further steps: on the 21st of *February*, 1839, on the motion of the Defendant, the bill was dismissed with costs, for want of prosecution. *Padmore* v. *Bodfield.* vol. 1, p. 367
2. A Plaintiff having obtained an order of course to amend after the time limited for that purpose had expired, and the Defendant being in a condition to move to dismiss for want of prosecution: Held, that a single notice of motion to discharge the irregular order and to dismiss the bill was not irregular on the ground of multifariousness. *Traile* v. *Bull.* vol. 1, p. 475
3. A sole Plaintiff having died, the Court, on the application of the Defendant, ordered that the administrator should revive, or that the bill should be dismissed without costs. *Chowick* v. *Dimes.* vol. 3, p. 290
4. On the death of one of two co-Plaintiffs after the cause was at issue, it was ordered, on motion, that the survivor should revive the suit within a fortnight, or, in default, that the bill should be dismissed with costs. *Lord Chichester* v. *Hunter.* vol. 3, p. 491
5. Default of six days in obtaining and serving an order for commission, Held, not such a want of due diligence as to entitle a Defendant to an order to dismiss, and a motion for that object was refused without costs. *Strickland* v. *Strickland.* vol. 4, p. 120
6. Where a Defendant's title to dismiss is intercepted by a step taken by the Plaintiff between the notice of the motion and its being heard, the Plaintiff must pay the costs of the application. *Waller* v. *Pedlington.* vol. 4, p. 124 (*Lester* v. *Archdale.* vol. 9, p. 156)
7. A Defendant filed a plea, but the Plaintiff neither set it down nor took any steps for three terms. The bill was, on motion, dismissed with costs. *Roberts* v. *Jones.* vol. 7, p. 266
8. Old practice of moving to dismiss and pass publication. *Wheatley* v. *Wheatley.* vol. 7, p. 577
9. The words "last of the answers," in the 114th Order of *May*, 1845 (Ord. xxxiii, 10), means the last answer of any one of several Defendants, so that the right of one Defendant to move to dismiss for want of prosecution is not delayed by his co-Defendant's neglect to answer. *Dalton* v. *Hayter.* vol. 7, p. 586 (*Lester* v. *Archdale.* vol. 9. p. 156)
10. A suit having become defective, in consequence of the bankruptcy of a co-Plaintiff, the Defendant moved to dismiss absolute. Held, that the Court, on such a motion, might order the Plaintiff to supply the defect within a limited time, or in default, that the bill might be dismissed. *Ward* v. *Ward.* vol. 8, p. 397
11. Where, after notice to dismiss, the Plaintiff files a replication before the hearing of the motion, the only order made is that the Plaintiff do pay the costs of the motion. *Corry* v. *Curlewis.* vol. 8, p. 606 (*Young* v. *Quincey.* vol. 9, p. 160)
12. A Plaintiff having one of the Defendants under his control, kept back his answer. Another Defendant put in his answer, and after great delay on the part of the Plaintiff, moved to dismiss for want of prosecution. The Plaintiff, to defeat the motion, obtained an order of course to amend. Held, that as there was an answer outstanding, the order to amend could not be considered "irregular," but was afterwards discharged on account of the Plaintiff's delay. *Forman* v. *Gray.* vol. 9, p. 196 (*Earl Mornington* v. *Smith.* vol. 9, p. 251)
13. Under the General Orders, any Defendant is entitled to move to dismiss for want of prosecution, after the expiration of six weeks from the time when his answer is to be deemed sufficient. Upon such a motion all unavoidable, and all just and reasonable causes of delay may be considered, and in the cautious exercise of its discretion, the Court may grant or refuse to grant any further time the Plaintiff may require. *Forman* v. *Gray.* vol. 9, p. 200
14. A motion to dismiss for want of prosecution, made after the bankruptcy of the Plaintiff, refused with costs, the proper form of motion being, that the assignees do file a supplemental bill within a given time, and, in default, that the bill stand dismissed. *Robinson* v. *Norton.* vol. 10, p. 484
15. A bill was filed against *A.* and *B.* *A.* obtained an order to stay proceedings, until the Plaintiff had paid the costs of a former suit for the same object, and which had been dismissed with costs. The Plaintiff not paying the costs, was prevented from proceeding against *A.*, and, after considerable delay, *B.* procured the bill to be dismissed for want of prosecution. *Lautour* v. *Holcombe.* vol. 10, p. 256

16. A reference as to title was made before hearing. A motion to dismiss for want of prosecution pending the reference was refused. *Gregory* v. *Spencer.* vol. 11, p. 143

17. After a cause had been in the paper for hearing, one of the Plaintiffs became bankrupt, and an order was made, that the co-Plaintiff should file a supplemental bill in ten days, or in default, that the bill should stand dismissed. The supplemental bill was filed, but no process was served or other proceeding taken. Held, that the Plaintiff was bound to prosecute as well as file the supplemental bill, and after a delay of three years the original bill was, on motion, dismissed with costs. Held, also, that the Defendant, not having appeared in the supplemental suit, could not move to dismiss it, and that one Defendant could not move to dismiss as against his co-Defendants. *Ward* v. *Ward.* vol. 11, p. 159

18. After decree for an account the bill cannot be dismissed even with consent; but the proper order is to stay all proceedings. *Egg* v. *Devey.* vol. 11, p. 221

19. Proceedings in a second suit were stayed, until the costs of a former suit for the same purpose had been paid. After great delay the Court ordered, that, unless the costs were paid within a limited time, the bill should stand dismissed. *Lautour* v. *Holcombe.* vol. 11, p. 624

20. A bill of 1,500 folios was filed in *February*, 1850, and the answer of 900 folios was filed in *June*. On motion to dismiss in *January*, 1851, the Plaintiff desired time to amend. Held, that the delay was inexcusable, and the bill must be dismissed, unless the Plaintiff filed his replication forthwith. *Thruston* v. *Smith.* vol. 13, p. 112

21. A suit stood dismissed for want of prosecution, in consequence of the Plaintiff not serving a *subpœna* to hear judgment within the time limited by an order to speed. The Plaintiff moved to stay the taxation of the costs of suit. Held, that the motion ought to have been to restore the bill; and that although the Court would feel inclined to grant indulgence in the case of a *bonâ fide* mistake, yet that it was not to be extended to such an extent as to encourage parties in proceeding negligently with their suits. *Bartlett* v. *Harton.* vol. 17, p. 479

22. The Plaintiff required *A.*, but not *B.*, to answer the amendments. *B.*, who did not desire to answer, moved after fourteen days to dismiss. Held, that the case was not within the 115th Order of *May*, 1845. *Brown* v. *Butter.* vol. 21, p. 615

23. Bill dismissed with costs, as against a banking company, after the death of the public officer named as Plaintiff and before the substitution of another. *Burmester* (*public officer*) v. *The Baron Von Stenz.* vol. 23, p. 32

24. An order was made to dismiss, in default of the Plaintiff filing a replication within fourteen days, but nothing was said as to the costs of suit. The Plaintiff filed a replication a few days after the time appointed. On a subsequent application the Court dismissed the bill, and with costs. *Stephenson* v. *Mackay.* vol. 24, p. 252

25. The Plaintiff set down the cause, but neglected to serve a *subpœna* to hear judgment in time. The cause became afterwards abated by the death of a Defendant. Held, under these circumstances, that an order to dismiss was regular. *Williams* v. *Page.* vol. 24, p. 490

26. A Defendant who has taken the benefit of the Insolvent Debtors' Act may move to dismiss for want of prosecution. *Levi* v. *Heritage.* vol. 26, p. 560

27. After a winding-up order, the name of the official manager had been substituted for that of three members, who sued on behalf of themselves and the other members. A motion was subsequently made by the Defendant to dismiss for want of prosecution. The order was made, with costs to be paid by the Plaintiffs, and not by the official manager, who had not adopted the suit. *Caldwell* v. *Ernest.* (No. 2.) vol. 27, p. 42

28. At the hearing, a suit was found defective for want of parties, and was ordered to stand over, with liberty to amend by adding parties. It was brought on a second time still defective for want of parties. The Court dismissed it as against all the Defendants. *Williams* v. *Page.* (No. 4.) vol. 28, p. 148

29. By the General Orders evidence in a cause is to close within eight weeks after issue joined, but a witness who has made an affidavit may be cross-examined within one month after such eight weeks. A Defendant may move to dismiss, if the Plaintiff does not set down the cause "within four weeks after the evidence closed." Held, in a case where there was no cross-examination, that the evidence closed at the end of eight weeks, and not of twelve weeks. *Hart* v. *Roberts.* vol. 32, p. 231

30. A notice of motion to dismiss for want of prosecution is irregular if served prior to the Plaintiff's being in default, although at the time when the motion is heard the Plaintiff is in default. *Ponsardin* v. *Stear.* vol. 32, p. 666

31. A Defendant, knowing the Plaintiff has used due diligence, is liable to pay the costs of his motion to dismiss for want of prosecution. *Ingle* v. *Partridge.* vol. 33, p. 287

DIVIDEND.

Under an act of 1845, the dividends on the shares in a water company were limited to 10*l.* per cent., after payment of which and providing for a contingent fund, the Court of Quarter Sessions had power to reduce the water rates. By a second act in 1854, the capital was extended and a variation made in the shares and rate of interest. Held, on the construction of the second act, that shareholders under the first act were not deprived of their right to payment, out of any surplus, of their arrears of dividends existing at the passing of the second act. *Coates* v. *Nottingham Waterworks Company.* vol. 30, p. 86

DOCUMENTS.

[*See* EVIDENCE (DOCUMENTARY), PRODUCTION OF DOCUMENTS.]

DOMICILE.

1. Compromise of suit by married women domiciled in *France*, sanctioned without reference to the Master, on proof that they had concurred in notarial acts, which, by the law of *France*, were binding on them, and that the subject-matter was mere personalty. *Chameau* v. *Riley.* vol. 8, p. 269
2. A *feme covert*, domiciled with her husband in *Scotland*, was entitled to the produce of a real estate in *England* directed to be sold. Upon proof that, by the law of her domicile, her personal estate vested absolutely in the husband, and that she had no equity to a settlement, the estate, being unsold, was directed to be conveyed to the husband in fee. *Hitchcock* v. *Clendinen.* vol. 12, p. 534
3. A contest as to domicile is a proper question to be decided upon the trial of an issue. *Whicker* v. *Hume.* vol. 13, p. 366
4. A Scotchman by birth executed his will while resident in Paris, and died shortly after. He described himself as "*J. B. G.*, of the city of Edinburgh, but now residing in Paris." On a question as to his domicile, the Court thought it unnecessary to consider this, as no description which the testator could have given of himself would, by itself, have had any effect in determining the domicile. *Ibid.*
5. There is no foundation in law for the argument or notion, that a Scotchman by birth cannot acquire a domicile without repudiating his nationality, his character or quality of Scotchman, or in a country where he is only a lodger and not a housekeeper. *Ibid.*
6. Whether a foreigner can obtain a civil domicile in France without the authorization of the French government, *quære.* The testator, *J. B. G.*, was born in Scotland of Scotch parents, and was there educated. In 1780, when twenty years of age, he went to the East Indies in the East India Company's Service. In 1804 he returned to England, and afterwards retired from the Company's service. In 1806 he went to Edinburgh, where he became a banker, purchased real estate, married, and became domiciled there. His affairs became embarrassed, and in 1817 he came to London, and continued to reside in England until 1828, in furnished lodgings, and occupied himself in the sale of his Oriental works, and in lecturing on the eastern languages, chiefly under the auspices of the East India Company. Between 1817 and the time of the death of the testator, he also projected various undertakings of which he was to be the director, in London; he paid three short visits to Scotland, and in 1825 he went to Belgium, and continued travelling about the Continent. In 1833 he returned to England, and in 1834 he again went to France, where he principally resided until his death. In 1837 he took a lease of a residence in Paris for a term of years, where he continued to reside; he died at Paris on the 8th of January, 1841, having executed a will according to the laws of England, in which he described himself as "*J. B. G.*, of Edinburgh, but now residing in Paris. His declarations as to domicile were contradictory. Held, under all the circumstances, that in 1817 the testator was domiciled in Scotland, that he subsequently became domiciled in England, was so in 1827; and so remained to the time of his death. *Whicker* v. *Hume.* vol. 13, p. 366
7. A foreign ambassador held, under the circumstances, to have acquired an *English* domicile. *Heath* v. *Samson.* vol. 14, p. 441
8. In 1819 a *Sardinian* came to *England*, and became attached to the *Sardinian* Embassy. In 1821 he was dismissed, but he continued to reside ten years in *England.* He was then for three years *Chargé d'Affaires* in *London*, and for three years Minister in *Holland.* In 1837 he was appointed Envoy Extraordinary and Minister Plenipotentiary to *England*, and retained this office until his death in 1846. Held, upon the evidence of his declaration and acts, that he was domiciled in *England.* *Ibid.*
9. A *Scotchman* came to *England* at the age of sixteen, and remained in the English naval service until his death in 1848. Held, that he had not lost his domicile of origin. *Brown* v. *Smith*, vol. 15, p. 444
10. The mere declaration of intention to change a domicile, without an actual

change of residence, is inoperative to create a new domicile. *Brown* v. *Smith.* vol. 15, p. 444

11. To constitute a new domicile, there must be not only the *factum* of residence in a place, but the *animus manendi. Ibid.*
12. Under a Scotch settlement, a wife would, by the general law of *Scotland*, have power to give valid discharges for a reversionary interest in a chose in action comprised in it. Held, that the removal of her domicile to *England* did not superinduce a disability in her to give a receipt to trustees for the amount. *Duncan* v. *Cannan.* vol. 18, p. 128
13. The priorities of creditors are regulated by the domicile of the testator, though the personal assets may be situate and administered in another country. *Wilson* v. *Lady Dunsany.* vol. 18, p. 293
14. *A.* and *B.* were both domiciled in *England*. *A.* lent *B.* money on an English bond, payable to him and his executors. Afterwards *B.* gave *A.* a heritable bond charging lands in *Scotland* as an additional security, and made payable to him and his heirs at a different time and with a different rate of interest. On the death of *A.*, Held, that the English bond was the primary security, and that it did not merge in the Scotch heritable bond as the *jus nobilius;* that the debt passed under *A.*'s will, executed according to the English but not according to the Scotch solemnities, by the general term "securities for money." *Cust* v. *Goring.* vol. 18, p. 383
15. Where it is sought to have funds belonging to a domiciled Scotch *feme covert* paid out of Court, and any Scotch settlement exists, the Court requires the testimony of a Scotch advocate to shew that it does not affect the fund. *In re Todd, Shand* v. *Kidd.* vol. 19, p. 582
16. An Englishwoman married a domiciled Frenchman. Articles were, previous to the marriage, executed in the English form, by which the wife became entitled to 200*l.* a year. Her husband afterwards separated from her, and subsequently the French Court condemned her for adultery. Held, that the contract of marriage was English, and that the rights of the parties were to be regulated by English law, and further property of the wife having fallen into possession, and the moral conduct of both parties being reprehensible, the income of the fund must be equally divided between them. *Watts* v. *Shrimpton.* vol. 21, p. 97
17. A testator bequeathed personal estate in trust for the separate use of a *feme covert*, and without power of anticipation. The legatee was, at the date of the will, domiciled abroad, and had continued so ever since. By the law of her domicile, the restraint against anticipation was disregarded, but this Court, nevertheless, refused to give effect to a beneficial arrangement made by her anticipating her income. *Peillon* v. *Brooking.* vol. 25, p. 218
18. A *feme covert*, living apart from her husband, has no power to change her domicile. *Re Daly's Settlement.* vol. 25, p. 456
19. A *feme covert* had a power to appoint by her will, "notwithstanding her coverture, and as if she were sole and unmarried." She lived in *France* thirty years, apart from her husband, who was domiciled in *England*. Held, that her will, which was valid, in respect of formalities, by the French law, but invalid as regarded the English law, was not a due execution of the power. *Ibid.*
20. A domiciled Scotchman went to *India*, where he was engaged in mercantile pursuits for nine years. Held, that this residence and occupation in *India* did not, in the absence of any expression of intention, change his domicile. *Jopp* v. *Wood* (No. 3). vol. 34, p. 88
21. *J. S.*, a domiciled Scotchman, went to *India* in 1805, where he followed mercantile pursuits for nine consecutive years. In 1816 he married there, and he returned to *Scotland* in 1819, with his wife, and remained there a year. While there, he described himself in his will, and in a bond, as "of *Calcutta*, presently residing at *Ayre*," he obtained a plan for the improvement of his old family mansion, and was enrolled a freeholder of *Ayrshire*. He returned to *Calcutta* in 1820, and remained there until his death in 1830. During the nine first years of his residence in *India*, he expressed no intention as to his domicile; but, during the last sixteen, he expressed his intention of returning to *Scotland*, but which he never accomplished except by his visit in 1819. Held, that the domicile of *J. S.*, at his death, was Scotch, and that the domicile of his children, who were born in *India*, and died infants there, was that of their father. *Ibid.*
22. The rule of law, that an engagement in *India* in the military service of the *East India Company*, or as a covenanted servant to that company, changes the domicile into *Anglo-Indian*, does not extend to a person who becomes the servant in a private establishment abroad, or who goes abroad for the purpose of acquiring a fortune, with the intention of returning, at some undefined period, when his object has been attained. *Ibid.*
23. Personal property was held, under an English will, in trust for such person as an English lady should, by her last will in writing duly executed, appoint. She afterwards married a Frenchman, and died domiciled in *France*, having ap-

pointed the property by an unattested will, valid according to the law of her domicile, and admitted to probate in this country. Held, that this will was a valid execution of the power. *D'Huart* v. *Harkness*. vol. 34, p. 324

24. A person, whose name was English, but whose domicile of origin was not shewn, held a commission in the English army. He sold out in 1810, and subsequently resided, down to his death, in *France*, there he formed a French connexion, there he educated his son as French, and there he died; and his whole property was in French Rentes. Held, that his domicile at his death was French, and that legacy duty was not payable on his assets. *The President of the United States of America* v. *Drummond*. vol. 33, p. 449

DONATIO MORTIS CAUSA.

1. A farmer's wife, with his knowledge and sanction, deposited the produce of the surplus butter, eggs, and poultry with a firm in her own name, and he called it her money. On his death-bed he gave his executor directions to remove the money, and do the best he could with it for his wife. Held, that the evidence was not sufficient to establish a gift between them, and that the husband had neither made the firm nor himself trustees for his wife. *Mews* v. *Mews*. vol. 15, p. 529

2. A testator, on his death-bed, gave his wife his cheque for 1,000*l*., saying, "she would want money before his affairs were wound up, and that the gift was to be for her sole use, besides what she should receive from his estate." The cheque being crossed was exchanged some days after for a friend's cheque of the same amount, in favour of the wife. The testator stated to his friend, that he wished to give his (the friend's) cheque to her, and she received and kept it till after her husband's death. The testator's cheque was paid before his death, but his friend's cheque, which was post-dated and also crossed, was exchanged for another, and was duly paid after the testator's death. Held, that this constituted a valid gift of the 1,000*l*. by the husband to the wife, and formed no part of the testator's estate. Held, also, by the Lords Justices, that it constituted a good *donatio mortis causâ*. *Bonts* v. *Ellis*. vol. 17, p. 121

3. Immediately before her death, the deceased told *A*. to take the keys of a dressing-case and box, containing a watch and trinkets, and immediately on her death to deliver the watch and trinkets to the Plaintiff. *A*. did so. Held, that this did not constitute a valid *donatio mortis causâ*. *Powell* v. *Hellicar*. vol. 26, p. 261

4. A promissory note, payable to order may be the subject of a *donatio mortis causâ*, and will pass there by, though unindorsed. *Veal* v. *Veal*. vol. 27, p. 303

5. The gift of bills of exchange payable to the donor or order, by way of a *donatio mortis causâ*, supported. *Rankin* v. *Wegnelin*. vol. 27, p. 309

6. Money due on a policy and on a banker's deposit note held to pass as *donationes mortis causâ* by the delivery of the policy and note. *Amis* v. *Witt*. vol. 33, p. 619

7. A marriage took place in France between a domiciled Frenchman and an Englishwoman who had been resident there for some years, and with a view to a future domicile. The lady's personal property was settled by an English deed, which was wholly invalid according to the French law. Held, that it was binding in the English Courts as to personal property within its jurisdiction. *Van Grutten* v. *Digby*. vol. 31, p. 561

8. If a foreigner and an Englishwoman make an express contract previous to their marriage, and if on the faith of that contract the marriage afterwards takes place, and it relates to the regulation of property within the jurisdiction and subject to the laws of this country, then this Court will administer the law on the subject, as if the whole matter were to be regulated by English law. *Ibid.*

DOWER.

[*See* FREEBENCH.]

1. The legal estate of a property being vested in *A*., for the benefit of himself and *B*. in equal moieties, he mortgaged it unknown to *B*. *B*. afterwards paid off the mortgage, and had the legal estate conveyed to him, subject to such equity of redemption as the lands were subject to. Held, that there was not such a perfect union of the legal and equitable estate in *B*.'s moiety of the estate as to give his widow a title to dower. *Knight* v. *Frampton*. vol. 4, p. 10

2. A widow concurred in a partition of her husband's estate, and released a moiety allotted to the other tenant in common from her dower; the other moiety was conveyed to the trustees of her husband's will. Held, that she was entitled to dower out of the entirety of the latter moiety. *Reynard* v. *Spence*. vol. 4, p. 103

3. A legacy to a widow in lieu of dower or thirds at common law or by custom, has no priority over other legacies where the testator leaves no real estate. *Acey* v. *Simpson*. vol. 5, p. 35

4. A party died in 1830, having vested in him a mortgage in fee, and the lapse of time and circumstances were such, as to render it very improbable that any party

could now establish any right to the equity of redemption. Held, nevertheless, that the widow was not entitled to dower. *Flack* v. *Longmate.* vol. 8, p. 420

5. The widow of a freeman of *London* is barred of her customary part by an antenuptial settlement, whereby the parents of husband and wife make provision for her after the death of her husband, of which she takes the benefit. *Hutchinson* v. *Newark.* vol. 17, p. 393

6. The same rule applies though the wife be an infant on the marriage and the husband becomes a freeman afterwards. *Ibid.*

7. Dower of a woman, married after the Dower Act, out of an estate made subject to dower by that statute, held not to be excluded by a declaration against dower contained in a conveyance prior to the act. *Fry* v. *Noble.* vol. 20, p. 598

8. In 1827 freeholds were conveyed to *A. B.*, a married man, to the usual uses to bar dower, "to the intent that his then present or any future wife might not be entitled to dower." In 1834 the Dower Act passed, giving dower out of estates thus limited (s. 2), but allowing the right to be defeated by a declaration against dower in the conveyance (s. 6), and providing, that the act should not extend to any widow married before 1834, or to give to any deed previously executed the effect of defeating any right of dower. *A. B.* contracted a second marriage in 1838, and died seised. Held, that the declaration in the conveyance did not defeat the second wife's right to dower out of the estate. *Ibid.*

9. Costs allowed to a widow, in a suit for dower, her right thereto being contested. *Ibid.*

10. By Sir *John Romilly's* Act, freeholds and copyholds of a deceased are now assets for the payment of his debts, and, by the Dower Act, all debts to which the land of a deceased are subject, are "valid and effectual as against the right of his widow, to dower." Held, nevertheless, that the widow's right to dower or freebench has still priority over mere creditors of a deceased. *Spyer* v. *Hyatt.* vol. 20, p. 621

11. A husband was seised in fee subject to a trust term to secure life annuities and to pay him half the surplus rents. Held, that his widow was entitled to have her dower set out at once. *Sheaf* v. *Cave.* vol. 24, p. 259

12. A wife forfeits her dower under the Statute of Westminster the 2nd, by her adultery, though it may have been brought about by the misconduct of her husband. *Bostock* v. *Smith.* vol. 34, p. 57

13. A widow became entitled to her dower, after which the lands were taken compulsorily by a public board, and one-third of the purchase-money was paid into Court, invested, and carried over to a separate account to answer the dower. The widow died in *October*, between the *July* and *January* dividends. Held, that her estate was entitled to an apportionment of the latter dividends. *Harrop* v. *Wilson.* vol. 34, p. 166

DRAINING ACT.

Under the Draining Act, where the tenant for life is an infant, the petition must be presented in the name of his guardians.

Form of reference under this act (3 & 4 *Vict.* c. 55), and of the subsequent proceedings thereon. *Stanhope* v. *Stanhope.* vol. 3, p. 547

DRAWING UP DECREE.

[*See* DECREE.]

DYING WITHOUT ISSUE.

[*See* ABSOLUTE INTEREST, IMPLICATION (GIFTS BY).]

1. A testator gave the income of his personal, and the rents of his real estate, to his daughter for life, for her separate use, and after her decease and the decease of his wife, he gave the residue of his real and personal estate to trustees, in trust to sell and pay half the produce "to the *issue*" of his daughter, equally, to be paid at twenty-one; and if only one *child*, then to such one *child;* and he directed the trustees to apply the interest in the maintenance and education of such issue; "and in default of *such issue*" he gave such moiety of the residue between his nephews and nieces living at the death of his daughter. And he gave and devised the other moiety of the residue of his estate, at the decease of his wife and his daughter *without issue*, to the same trustees, to permit his godson to receive the income for life, and after his decease to certain charities. Held, that "issue" in the first clause was to be construed "children;" but in the second clause in its ordinary unrestricted sense; and that consequently the gift over of the first moiety, upon the death of the daughter without issue, was good, but was too remote as to the second. *Carter* v. *Bentall.* vol. 2, p. 551

2. Bequest of pecuniary legacies to each of four persons for life, interest at 5*l.* per cent., to be paid till the heir attained twenty-one; and "in case of the demise of any of the above parties without legitimate issue, then his or her proportions to be divided equally amongst the sur-

vivors." After the testator's death, one of the legatees died, without having been married. Held, that the survivors were absolutely entitled to the legacy. *Ranelagh* v. *Ranelagh.* vol. 4, p. 419

3. Bequest of residue to *A.* and *B.* equally, and in case they should be married at the time it became payable, to be paid for her separate use, "and her receipt alone for the same to be a sufficient discharge." There was a gift over to *C.* and *D.*, in case *A.* and *B.* should die without leaving issue. Held, that this case was an exception to the general rule, and that the gift over was confined to *A.* and *B.* dying without leaving issue in the life of the testator. *Re Anstice.* vol. 23, p. 135

4. The words "if *A.* die without having any child or children," construed "without having had any child;" and the words "should *A.* die without any child or children," construed "any child surviving him." *Jeffreys* v. *Conner.* vol. 28, p. 328

EASEMENT.

[*See* LIGHT AND AIR, NOTICE, RIGHT OF WAY.]

EAST INDIA COMPANY.

The "*Clive* fund" held not to revert to the founder, on the transfer, in 1858, of the government of *India* and its military force to the Crown. *Sir John Benn Walsh* v. *Her Majesty's Secretary of State in Council of India and the Attorney-General.* vol. 30, p. 312

ECCLESIASTICAL COMMISSIONERS.

[*See* CHARITY.]

The Ecclesiastical Commissioners held entitled to no greater rights in the suppressed canonries, under the 3 & 4 *Vict.* c. 113, than the former canons were, and to be subject to the same trusts. *Attorney-General* v. *Dean and Canons of Windsor.* vol. 24, p. 679

ECCLESIASTICAL COURT.

[*See* JURISDICTION.]

EFFECTS.

[*See* DESCRIPTION OF GIFT.]

1. As to the residue of his "estate and effects, whatsoever and wheresoever, canal shares, plate, linen, china, and furniture," the testator devised and bequeathed the same to his wife. Held, that the residuary personal estate passed, and that the general words were not limited to things *ejusdem generis* with canal shares, &c. *Fisher* v. *Hepburn.* vol. 14, p. 631

2. *A.* assigned "all his ready money, securities for money," &c. &c., "and all other his personal estate and effects whatsoever or wheresoever of or belonging, or due or owing to him." Held, that the general words passed only property *ejusdem generis* with that specified, and that they did not convey a contingent reversionary interest in a legacy. *Re Wright's Trusts.* vol. 15, p. 367

3. A testatrix, after giving pecuniary and specific legacies, and after directing her charity legacies to be paid out of her personal estate, "gave and bequeathed" all the rest "of her estate and effects, whatsoever and wheresoever, and all her diamonds and other jewels," to trustees, their "executors and administrators," upon trust to sell and divide. Held, that the real estate passed to them. *Patterson* v. *Huddart.* vol. 17, p. 210

4. Bequest of "all my household furniture and effects, plate, linen, china, glass, books, wearing apparel, *et cætera.*" Held, to pass the articles enumerated and others *ejusdem generis*, but not the general residue. *Newman* v. *Newman.* (No. 2). vol. 26, p. 220

5. Where there is a bequest particularized by one word, followed by general words, the latter will not be restricted to things *ejusdem generis.* *Swinfen* v. *Swinfen.* (No. 4.) vol. 29, p. 207

6. A testator devised to Mrs. *S.*, "all his estate at *Swinfen* or thereto adjoining, also all furniture and other moveable goods here." Held, that the live stock and implements of husbandry which were in or about the lands and premises adjoining the mansion at *Swinfen* (at which the testator resided) passed by this bequest. Held, also, that money in the house at the testator's death, amounting to 541*l.*, also passed to the legatee. *Ibid.*

7. A testator bequeathed to his wife his pay, "clothing, money and moneys that may be now due or may become due to me at my decease, also the whole of my property and effects, that is to say, my box, clothes, bedding, &c. &c." Held, that the whole residue passed, including a reversionary interest in the produce of the sale and conversion of a residuary real and personal estate of another testator. *Gover* v. *Davis.* vol. 29, p. 222

8. A testator bequeathed as follows:—"As regards my worldly goods, I give and and bequeath all my furniture, plate, books and other personalty" to my wife. Held, that the general words were not to be confined to things *ejusdem generis*, but

that they included a share of the produce of real and personal estate, to which the testator was entitled under the will of his father. *Nugee* v. *Chapman.* (No. 2.) vol. 29, p. 290

9. A lady, being entitled to an interest in certain funds under a will, by her marriage settlement assigned all the share to which she was then or might become entitled by accruer, survivorship "or otherwise," in the specified funds. Held, that the general words "or otherwise" must be limited to interests taken under the will, and that a share taken by her under the will of her father, who had become entitled thereto under his son, was not affected by the settlement. *Parkinson* v. *Dashwood.* vol. 33, p. 49

10. A landlord was empowered to resume possession of any part of the land demised, in case it should be required by him "for the purpose of building, planting, accommodation or otherwise." Held, that this did not entitle the landlord to resume possession of land required by a railway company, so as to defeat the tenant's right to compensation. Held, also, that the word "otherwise" was to be read as being *ejusdem generis*. *Johnson* v. *The Edgware, &c. Railway Company and Others.* vol. 35, p. 480

"ELDEST CHILD."

[*See* "YOUNGER CHILDREN."]

1. Devise and bequest to *A.*, and after her decease leaving any child or children her surviving who should attain twenty-one, to pay her share "to her eldest child, his executors, administrators and assigns," with a gift over in default of such child. Held, that *A.*'s eldest child, who died in *A.*'s life, did not take, but that the second child who survived her mother was entitled. *Stevens* v. *Pyle.* vol. 30, p. 284

2. *A. B.*, on his marriage, settled real estates on himself for life, then to trustees for a term to raise portions for his younger children, and subject thereto, to his first and other sons in tail. The portions were to vest in sons at twenty-one, but to be payable after the decease of the husband and wife. *George*, the second son, attained twenty-one, after which *William*, the eldest son, having barred the entail died without issue, and, subsequently the portions became payable. Held, that *George*, though the eldest at the period of distribution, was entitled to a share of portions for younger children. *Adams* v. *Beck.* vol. 25, p. 648

3. The character of "eldest son" is, in ordinary cases, to be ascertained at the period of vesting, and not of payment. *Adams* v. *Adams.* vol. 25, p. 652

4. Bequest to *A.* for life, and afterwards in trust for her children who, not being an eldest or only son, should attain twenty-one. In 1854, after *George*, the second son, had attained twenty-one, the eldest son died, and the second thereupon became eldest. The tenant for life died in 1857. Held, that *George*, though an eldest son at the time the fund became payable to the children, took a share. *Adams* v. *Adams.* vol. 25, p. 652

5. Under a trust for *A.* for life, "and after her decease, to be divided equally between her younger children." Held, first, that the children took vested interests at their births; and secondly, that the character of "younger child" was to be determined at the period of vesting, and not that of distribution. *Adams* v. *Roberts.* vol. 25, p. 658

ELECTION.

[*See* ELECTION TO SUE AT LAW OR IN EQUITY.]

1. A widow was absolutely entitled to legacies of 3,500*l.*, of which her husband by his will professed to give to her, and her children 2,500*l.*, which he directed to be invested in the funds or real securities. He gave his widow other benefits out of his own property. The widow received the money, and invested it in the funds, but treating it as her own, she afterwards sold it out, and applied it to her own use. A case of election arose on the will, but it did not appear when she had elected. Held, that the widow electing to take under the will was responsible for 2,500*l.* only, and not for the stock purchased therewith. *Palmer* v. *Wakefield.* vol. 3, p. 227

2. A tenant in common agreed to make a partition, and by his will he confirmed the agreement, and devised the estate to trustees to convey the part agreed to be conveyed to the other tenant in common and his heirs, and to receive a conveyance of the other part; and he devised it and all his real and personal estate to his trustees to receive the rents and pay an annuity to his widow, &c. &c. Held, that the widow was bound to elect as to her dower. *Reynard* v. *Spence.* vol. 4, p. 103

3. A widow, in a case in which she was bound to elect between her dower and an annuity given by her husband's will, received the annuity for five years. Held, that she had not, under the circumstances, elected. *Ibid.*

4. *A. B.*, an heir, elected to take against the will, and required the executors to complete a contract entered into by the testator for the purchase of a freehold estate, and it was conveyed to him. He

nevertheless received great benefits under the will. Held, that the parties disappointed by the election had no lien on the estate for the amount received; but that they were entitled to prove against the estate of *A. B.* for the whole amount received by him under the will. *Greenwood* v. *Penny.* vol. 12, p. 403

4a. A testator duly appointed a fund in favour of objects of the power absolutely, and he also bequeathed to them his own property, "especially requesting them" to leave the appointed fund to persons not objects of the power. Held, that this did not raise a case for election. Held, also, that the result would have been different, if there had been a direct appointment of the subject of the power to strangers. *Blacket* v. *Lamb.* vol. 14, p. 482

5. In 1842 a parent, having a power to appoint two separate sums of 5,000*l.* and 10,000*l.* amongst his children, made his will, by which he appointed the 5,000*l.* to *James*, and the 10,000*l.* between *Theodosia* and *Catherine*. In 1844 he, by deed, appointed the 5,000*l.*, which he had before appointed by will to *James*, to *Theodosia*. In 1846 he, by codicil, confirmed his will, and he died in 1847. *Theodosia* claimed the two sums of 5,000*l.*, but *James* contended, first, that she was bound, by election, to give effect to the bequest of 5,000*l.* to him, or to relinquish the 5,000*l.* given her by the will; and secondly, that the appointment of 1844 was a satisfaction of the legacy of 5,000*l.* Held, that no case of election had arisen, but that the legacy to *Theodosia* was satisfied, and the amount unappointed. *Montague* v. *Montague.* vol. 15, p. 565

6. A testator domiciled in *England* and having real and personal estate there, besides Scotch heritable bonds, devised and bequeathed "all his real and personal estate, whatsoever or wheresoever," upon trusts, under which his heir took benefits. The will had no operation on the heritable bonds, which descended to the Scotch heir. Held, by the Master of the Rolls and affirmed by the Lords Justices, that the heir was not bound to elect. *Maxwell* v. *Maxwell.* vol. 16, p. 106

7. A husband, who was entitled to family jewels and diamonds, bequeathed to his wife all "his" jewels for life, and afterwards as heir-looms. Held, that this bequest did not include pearl ornaments presented to her, or brilliant bracelets bought by the husband and given to the wife and worn with the family jewels, so as to put the wife to her election. *Jervoise* v. *Jervoise.* vol. 17, p. 566

8. A testator devised copyhold messuages to trustees, upon trust to permit his wife to occupy one of them during the minority of his youngest child, and to apply the rents of the others to the maintenance, &c. of his children, during minority, making thereout a provision for his wife. The testator then provided for the advancement of his children, the division of the messuages among them at twenty-one, and for benefit of survivorship among them. Held, that the widow was put to her election. *Goodfellow* v. *Goodfellow.* vol. 18, p. 356

9. A sum of 10,000*l.* Consols was held in trust for two sisters for life, and after their deaths two-thirds of the capital, in trust for their brother, and one-third in trust for the two sisters. The brother bequeathed "the whole of his property" to trustees, as to part upon certain trusts for his sisters, and he afterwards bequeathed "the property, including the 10,000*l.* trust money," to other parties. Held, that the sisters must be put to their election between the interests taken by them under the will and their interest in the 10,000*l.* *Swan* v. *Holmes.* vol. 19, p. 471

10. To constitute a settled and concluded election, there must be first clear proof that the person was aware of the nature and extent of his rights; and secondly, that having that knowledge, he intended to elect. *Worthington* v. *Wiginton.* vol. 20, p. 67
(*Wintour* v. *Clifton.* vol. 21, p. 447)

11. A testator having invested a sum of money in stock in the joint names of himself and his wife, gave his freehold and leasehold estates, and the specific stock to her for life, with remainders over, and he appointed her his sole executrix and residuary legatee. The wife, after her husband's death, had the stock transferred into her own name, and did not include it in the estimate for the purposes of probate. She recovered debts as executrix, occupied one of the houses, and received the rents of the estates; and on her second marriage, she transferred the stock into the names of herself and of another person, in trust for herself for life for her separate use, and then as she should appoint by will. She died sixteen years after the testator, and it was found by the Master that it would have been greatly to her disadvantage to have elected to take under the will. Held, nevertheless, that she had elected so to take. *Worthington* v. *Wiginton.* vol. 20, p. 67

12. The testator devised to *A.* and *B.* successively for life, and to the first and other sons of *B.* in tail, not only his own fee-simple estates, but others of which he was tenant in fee in remainder (subject to intermediate estates to *A.* and *B.*) in fee. It was held, upon the construction of the terms of the will, that the

testator intended to dispose of more than his own interest in the settled estates, and that therefore *A.* and *B.* were bound either to give effect to the will, or to make compensation. *Wintour* v. *Clifton.* vol. 21, p. 447

13. Precatory words will not create a case for election. *Langslow* v. *Langslow.* vol. 21, p. 552 (See *Blackett* v. *Lamb.* vol. 14, p. 482)

14. An erroneous impression, stated in a will, that *A.* (a legatee) would divide a fund appointed to *A.* alone equally with *B.*, did not put *A.* to his election. *Langslow* v. *Langslow.* vol. 21, p. 552

15. A testator had a power to appoint a fund, and his son (*A.*) and grandson (*B.*) were objects. Having by deed appointed part to his son, he, by will reciting that the son could, under the hotchpot clause, be obliged to bring in the appointed part, proceeded, "and then as I make no further appointment," the whole settled fund must be equally divided between *A.* and *B.* He made *A.* his residuary legatee. It turned out that the hotchpot clause did not apply. Held, first, that the will did not operate as an appointment, and, secondly, that no case of election arose. *Ibid.*

16. A settlement made during a lady's infancy held inoperative as regarded her real estate only, and she and her heirs were held not bound to elect either to give effect to the settlement as to the real estate, or abandon benefits in personal estate conferred on her by the settlement. *Campbell* v. *Ingilby.* vol. 21, p. 567

17. By a post-nuptial settlement, a husband and wife covenanted with trustees to settle all the property which the wife might become entitled to during the coverture on themselves for life, with remainder to their children. During the coverture, part of such property was allowed by the husband to be paid over to the trustees; the other part was not reduced into possession at the husband's death. Held, that, originally, the settlement was binding on neither party; secondly, that the part paid over had been effectually made subject to the trusts by the husband; and thirdly, that the wife refusing, after the death of her husband, to perform her covenant, was not entitled to a life interest in the portion settled, which was applicable to recoup the children. *Anderson* v. *Abbott.* vol. 23, p. 457

18. Heir at law held, under the circumstances, not put to his election. *Seaman* v. *Woods.* vol. 24, p. 372

19. A testator, whose only funded property consisted of a sum of Long Annuities, which had been purchased by him in the joint names of himself and wife, bequeathed to his brothers an interest in "his present funded Stock or government securities." He also made a provision for his wife. Held, that the wife was put to her election in regard to the Long Annuities. *Grosvenor* v. *Durston.* vol. 25, p. 97

20. A testator had an exclusive power of appointment over an estate to his children and grandchildren, and an exclusive power to appoint a fund amongst his children only. He appointed the estate to some of his children, and the fund to his children and to a grandchild (who was not an object). Held, that this was not a case of election, and that the children were not compellable to elect either to give effect to the appointment of the fund to the grandchild, or reject the benefits appointed under the first power. *In re Fowler's Trust.* vol. 27, p. 362

21. A testator was the owner in fee of a moiety of the *Goose Green* property, the other moiety belonged to his wife. By his will he devised "all that his messuage, tenement," &c. situate at *Goose Green* and all other his real estate to his widow for life, and he gave her other benefits. Held, that this raised a case of election as against the widow. *Fitzsimons* v. *Fitzsimons.* vol. 28, p. 417

22. Under his marriage settlement, *A. B.* had a power of appointing property amongst the children or remoter issue of the marriage. By his will he appointed the settled property to his son and daughter in equal shares, to vest in them in the manner thereinafter expressed concerning his residuary estate. He afterwards gave his residuary estate in trust as to one-half to his son absolutely, to vest at twenty-five, but subject to the settlement thereinafter directed, which was to be made upon him and his children, with gifts over to persons not objects of the power. The son insisted that he took the settled property absolutely, discharged from the void restrictions, but the Court held, that he must elect whether he would take under or against the will. *Tomkyns* v. *Blane.* vol. 28, p. 422

23. The produce of an entailed property was settled on the parents, and afterwards on the children. It turned out, that, as to part of the fund, the entail had not been barred. Held, that the heir in tail (a son of the marriage), having accepted benefits under the settlement, was bound to give effect to it as to the part not disentailed. *Mosley* v. *Ward.* vol. 29, p. 407

24. A testator had freeholds in fee and was tenant in tail of copyholds. They were intermixed, part of the copyholds were in his own occupation and part, with parts of the freeholds, in the occupation of tenants upon leases at one rent. By his

will, he devised "all his real estates" to the Defendants, and gave all the lands occupied by him to his wife for life and confirmed the tenants in their occupations for twenty-one years. He likewise gave benefits to the heir in tail of the copyholds. Held, that such heir must be put to his election between the copyholds and the benefits provided for him by the will. *Honywood* v. *Forster*. (No. 2.)
vol. 30, p. 14

25. A testator made a provision for his widow, expressly in lieu and satisfaction of any estate or interest to which she might be entitled, as his widow, out of his real and personal estate. The widow enjoyed this provision, but, as the certificate found, "in ignorance of her right to dower." Held, sixteen years after the testator's death, that she was still entitled to elect. *Sopwith* v. *Maugham*.
vol. 30, p. 235

26. The wife of a testator was entitled to a share of the produce of the *R.* estate, which had been directed to be sold. By his will, the testator gave all "his share, estate and interest" in the *R.* property to his daughter, and benefits out of his own estate to his widow. Held, that the will raised a case for election as against the widow. *Whitley* v. *Whitley*.
vol. 31, p. 173

27. A testator had a freehold in *Potter Street* and a freehold in *South Street*, and he was entitled to two-thirds of a house and eighteen freehold cottages in *South Street*, the other one-third belonging to his wife. By his will, he devised all his freehold messuages, "cottages," &c., in the two streets to his wife for life, she keeping them in tenantable repair, and then upon trusts for sale and division. Held, that the wife was bound to elect between her one-third of the house and cottages and the other benefits given her by the will. *Miller* v. *Thurgood*.
vol. 33, p. 496

ELECTION TO SUE AT LAW OR IN EQUITY.

1. A Plaintiff served with an order to elect between proceedings at law and in equity, afterwards took a step in the action at law. Held, that he might, nevertheless, apply to discharge the order for election. Whether an order to elect stays all proceedings, *quære*. *Fennings* v. *Humphrey*.
vol. 4, p. 1

2. *A.* agreed to grant a lease of a vault to *B.*, and also to erect a crane, &c., and do within a given time, certain other acts which this Court could not decree to be specifically performed. *A.* having made default, *B.* sued in this Court for a specific performance, but did not pray that the above-stated acts should be specifically performed. Pending the suit *B.* also commenced an action at law against *A.* for damages suffered in consequence of the non-performance of the acts. Held, that the suit and action were not for the same matter, and an order to elect, obtained by the Defendant, was discharged. *Fennings* v. *Humphrey*.
vol. 4, p. 1.

ELEGIT.

[*See* FIERI FACIAS.]

1. A tenant by *elegit* took a conveyance of part of the lands extended, in satisfaction of part of his debt. Held, that his tenancy by *elegit* on the rest of the lands was extinguished and that his judgment was satisfied. *Hele* v. *Lord Bexley*.
vol. 17, p. 14

2. A creditor issued three *elegits* on three several judgments, and extended the lands of his debtor; he afterwards took a conveyance of part of them. On a question whether the tenancy by *elegit* had been wholly extinguished and the judgment satisfied, the creditor insisted, that it had not been shewn that the writs of *elegit* had been duly returned, and that no evidence had been given to shew in respect of which *elegit* the lands conveyed had been extended. But held, that the *onus* of proof was on the creditor, he being bound to make out that he was a subsisting incumbrancer; and, secondly, that as it was his duty to have caused a proper return to be made and filed, that he could not take advantage of his own omission. *Ibid.*

3. A creditor issued three *elegits* under three judgments, and the Sheriff, by virtue of the first two, extended the whole of a leasehold estate, and returned *nil* to the third. The first two judgments being adjudged to have been satisfied at the time, held, that the creditor had acquired no rights under his *elegits*. *Ibid.*

4. *A. D.*, being entitled to three annuities secured by covenant and judgment, received for twenty years part of the rents of the grantor's estates under *elegits* issued on satisfied judgments. Held, that he was not accountable for his receipts to a party having a charge on the estate, who had taken no proceedings to obtain possession. *Ibid.*

5. A bill filed by a judgment creditor before the expiration of twelve months from the date of the judgment to foreclose a fee simple estate of the judgment debtor cannot be supported unless he has issued an *elegit*. *Godfrey* v. *Tucker*.
vol. 33, p. 280

EMBLEMENTS.

Devise of real estate in the occupation of the testator, in trust for *A.* with a bequest of all live and dead stock, and all personal estate to *B.* Held, that the emblements on the real estate passed to *B.* *Rudge* v. *Winnall.* vol. 12, p. 357

ENCLOSURE.

[*See* INCLOSURE.]

ENDOWMENT.

1. Construction of "The Charitable Trusts Act, 1853" (16 & 17 *Vict.* c. 137) as regards the word "endowment" employed in the 62nd section as contradistinguished from the expression "voluntary contributions." *The Governors of the Charity for the Relief of Poor Widows and Children of Clergymen* v. *Sutton.* vol. 27, p. 651
2. The word "endowment," in the 62nd section of the 16 & 17 *Vict.* c. 137, has reference to an endowment made for some specific or particular purpose or trust. *Ibid.*
3. The investment by a charity of its voluntary contributions in land or other permanent security cannot convert it into an "endowment." *Ibid.*
4. Where land had, in 1682, been purchased by a charity and paid for out of the general funds voluntarily contributed to its support: Held, that it was not an "endowment" within the Charitable Trusts Acts, so as to require the consent of the Charity Commissioners to a sale of it. *Ibid.*
5. *A. B.* gave 1,000*l.*, which he vested in trustees, for the endowment of a new district church. After it had been consecrated, *A. B.* and the trustees, by deed, declared that the funds were held on trust to pay the income to the incumbent, so long as he "conducted the services according to the rites and ceremonies of the Church of *England*, in strict and literal accordance with the order of the Book of Common Prayer," and they also provided that disputes were to be referred to the Bishop. Held, that daily service was not required, and that disputes as to the conduct of the services ought to be referred to the Ordinary. *In re Hartshill Endowment.* vol. 30, p. 130
6. Whether, under the above circumstances, *A. B.* had any power, after the consecration of the church, to regulate the trusts of the endowment fund, *quære?* *Ibid.*

ENJOYMENT IN SPECIE.

[*See* CONVERSION OF ASSETS.]

ENLARGING PUBLICATION.

[*See* EVIDENCE (TIME FOR).]

ENQUIRY.

[*See* INQUIRY.]

ENROLMENT.

[*See* INROLMENT.]

ENTAIL.

[*See* ESTATE IN TAIL.]

ENTERING APPEARANCE.

[*See* APPEARANCE.]

1. To entitle the Plaintiff to an order for leave to enter an appearance for a Defendant, it must be shewn, by affidavit, that the copy of the *subpœna* served contained the memorandum directed by the General Orders. *Beetham* v. *Berry.* vol. 5, p. 41
2. Liberty for the Plaintiff to enter an appearance for the Defendant will not, after a delay of two months, be granted *ex parte.* *Edmonds* v. *Nicoll.* vol. 6, p. 334
3. The practice in such a case is not to make an order *nisi*, but to require notice of the application to be given, or that there should be fresh service of the *subpœna.* *Ibid.*
4. *Subpœna* to appear to bill of revivor served on the 3rd of *July*, and an application made on the 4th of *December* to enter appearance for Defendant: Held, that the Plaintiff must either serve a new *subpœna*, or give notice of motion. *Totty* v. *Ingleby.* vol. 7, p. 591
5. A Defendant out of the jurisdiction appeared and answered. The bill was amended, and served on the Defendant's solicitor, who did not enter an appearance. The Plaintiff was refused leave to enter an appearance for the Defendant. *Zulueta* v. *Vinent.* vol. 13, p. 227
6. The 4 & 5 *Will.* 4, c. 82, s. 2, is superseded by the 31st General Order of 1845 (Ord. X. 6), and, therefore, unless the Defendant has been in the jurisdiction *within two years* before the bill filed, the Court cannot, by way of substitution for the ordinary service of process, direct notice in the *Gazette.* *Thurlow* v. *Treeby.* vol. 27, p. 624

ENTERING EVIDENCE AS READ.

1. Enquiries being directed at the first hearing, the evidence was entered as read, "saving just exceptions." (But

see 2 *Colly.* 536, and 2 *Phill.* 137.) *Gee* v. *Gurney.* vol. 8, p. 315

2. It is not proper to enter, in a decree, evidence as "read *de bene esse*, saving just exceptions." If its admissibility be disputed, the point should be determined by the Court. *Drake* v. *Drake.* (No. 1.) vol. 25, p. 641

3. On a motion for a decree, neither the Plaintiff nor the Defendant gave notice of using the answer, nor was it in fact read. Held, that it ought to be entered as read in the decree. *Bright* v. *Legerton.* (No. 2.) vol. 29, p. 69

ENTITLED.

1. A will gave *A. B.* a life interest in remainder in an estate, and also a charge issuing out of the estate. The charge was to sink if *A. B.* became *entitled* to an interest in the estate. The word "entitled" was held to mean the beneficial enjoyment. *Chorley* v. *Loveband.* vol. 33, p. 189

2. Subject to prior life and possible absolute interests, there was a bequest of a portion of the residue to *A. B.*, with a gift over to his children or other issue, in case of his decease before he should "become entitled." Held, that this meant "entitled in possession." *Turner* v. *Gosset.* vol. 34, p. 593
(See *Sydney* v. *Wilmer.* vol. 25, p. 260)

EQUALITY.

[*See* APPORTIONMENT.]

1. This Court, when it can consistently with the instrument executed by the parties, will do that which is the highest equity, make an equality between parties who stand in the same relation, but it cannot do that contrary to the plain meaning of a deed. *Hulme* v. *Chitty.* vol. 9, p. 487

2. A fund was created for providing retiring pensions of 1,000*l.* a-year for civil servants of the *East India* Company in *Bengal*, after twenty-five years' service. The fund was derived from a deduction of 4*l.* per cent., on the salaries, with an equal amount contributed by the *East India* Company. A scale of the values of the annuities, according to the ages of the annuitants, was fixed, and upon a member's retiring with an annuity, if the amount paid by him, together with its accumulations, were less than one-half of the tabular value of his annuity, he was bound to make up the deficiency. The contrary happened to the Plaintiff, who had paid 4,469*l.* more than the half value. Held, that he was not entitled to have the excess refunded. *Boldero* v. *The East India Company.* vol. 26, p. 316

EQUITABLE ASSETS.

Surplus produce of the sale, under the Court, of leaseholds for lives mortgaged by the testator. Held, legal, and not equitable assets. *Christy* v. *Courtenay.* vol. 26, p. 140

EQUITABLE ASSIGNMENT.

[*See* EQUITABLE CHARGE.]

1. Effect given to an equitable charge, for valuable consideration, upon *expectant* legacies. *Bennett* v. *Cooper.* vol. 9, p. 252

2. A creditor, by ordering or directing his debtor to pay the debt to another person, may, in equity, effectually assign the debt to such other person. *Rodick* v. *Gandell.* vol. 12, p. 325

3. In equity, there may be a valid assignment of funds or property to be subsequently acquired, even in cases where the acquisition depends on contingencies and possibilities only.
A railway company was indebted to *A.*, their engineer, who was greatly indebted to his banker. The latter having pressed for payment or security, *A.*, by letter to the solicitors of the company, authorized them to receive the money due to him from the railway company, and requested them to pay it to the banker. The solicitors, by letter, promised the banker to pay him such money on receiving it. Held, that this did not amount to an equitable assignment, and the solicitors having received the amount and paid it over to *A.*: held, secondly, that this was no more than a promise or undertaking, for which the solicitors might possibly be responsible at law, but that the remedy was not in equity. *Ibid.*

4. An officer, on the sale of his commission, wrote to his army agents directing them to pay the balance received to *A. B.*, a creditor. The letter was delivered to them, and they authorized *A. B.* to draw for 408*l.* the next month, when the vacancy would be filled up. Held, that this constituted a valid equitable assignment. *L'Estrange* v. *L'Estrange.* vol. 13, p. 281

5. A purchaser of a *chose in action* takes it subject to all equities; and, therefore, where *A.* mortgaged a fund in Court to *B.*, and afterwards joined *B.* in a submortgage to *C.*, and it was decided that the mortgage to *B.* was fraudulent and void. Held, that it was void also as to *C.*, and that neither *A.*'s concurrence in the first or second mortgage prevented him from insisting on the invalidity of the transaction with *B.*, he, *A.*, not being cognizant of his rights. *Cockell* v. *Taylor.* vol. 15, p. 103

6. A debt or other *chose in action* may be assigned in equity, without any concurrence on the part of the debtor, and no particular words are necessary for that purpose. *Bell* v. *The London and North Western Railway Company.* vol. 15, p. 548

7. A railway contractor gave his bankers a letter directing the railway company to pass the cheques which might become due to him "to his account with the bank." Held, that this was not an equitable assignment, but that it would have been, if it had directed the cheques to be passed to the bank. *Ibid.*

8. Assignees of a *chose in action* are liable to all the equities which attach to the thing assigned as against the assignor. *Smith* v. *Parkes.* vol. 16, p. 115
(See *Ord* v. *White.* vol. 3, p. 357)

9. A retiring partner received security from the continuing partners for his share, and which he assigned to third parties. Held, that the assignees took subject to the right of equitable set-off of the continuing against the retiring partner: Held, also, that the assignees having assented to a substituted security in 1846, in lieu of a prior one in 1845, were subject to all the equities existing at the date of the second security. *Smith* v. *Parkes.* vol. 16, p. 115

10. Where *A.*, having money in the hands of *B.*, directs a payment generally to *C.*, and *B.* consents, *C.* may enforce payment against *B.*; but it is necessary that *A.*'s order should be communicated to *C.* *Morrell* v. *Wootten.* vol. 16, p. 197

11. Where *A.*, having money in the hands of *B.*, directs him to pay a sum out of that particular fund to *C.*, this amounts to an equitable assignment, and the assent of *B.* is unnecessary to give it validity. *Ibid.*

12. By an order in a suit, *A.* was ordered to pay a sum to *B.* After *A.* had appealed, *B.*'s bankers induced *B.* to enforce the order and pay the amount to his account, the bankers undertaking to repay it, if on the appeal, *B.* should be ordered to repay it. The order was reversed, and *B.* directed his bankers to pay the amount to *A.*, but the direction was not communicated to *A.* The bankers had also said, they were quite ready to pay the money to *A.*, and *B.* had said, "there it is for you," viz. at the bankers. *B.* became bankrupt. Held, that neither the agreement, nor the order, nor the statements so made, gave to *B.* any claim upon the fund in the hands of the bankers. *Ibid.*

13. In the case of a *chose in action* which is not assignable at law, the transferee, taking only an equitable interest, can obtain no greater benefit in it than the transferor himself possessed. *Clack* v. *Holland.* vol. 19, p. 262

14. *A.* obtained a mortgage of real and personal estate from *B.* without consideration. It was afterwards deposited with *C.* as a security, who had no notice of the circumstances under which it had been obtained. Held, that *C.* would stand in no better position than *A.*, and the deed being void as against *A.*, was equally void as against *C.* *Parker* v. *Clarke.* vol. 30, p. 54

15. The assignee of a chose in action, which is not assignable at law, takes subject to all equities. *Rolt* v. *White.* vol. 31, p. 520

EQUITABLE CHARGE.

[*See* CHARGE, EQUITABLE MORTGAGE, NOTICE, PRIORITY, STOP ORDER.]

A wife had a jointure secured on her husband's estate *X.* In 1844, the husband contracted to purchase an estate *Y.*, and to enable him to sell the estate *X*, the wife, in 1845, released her jointure, and he then covenanted to secure it out of "estates he should *thereafter* acquire." Before the estate *Y.* had been conveyed, the husband contracted to sell it. Held, that in equity, the estate *Y.* was charged with the jointure. *Warde* v. *Warde.* vol. 16, p. 103

EQUITABLE MORTGAGE.

[*See* NOTICE, PRIORITY.]

1. *A.* mortgaged copyholds to *B.* by a deposit of a copy of his admission. *A.* died, and his heir mortgaged them to *C.* by deposit of a copy of his own admission. *C.* afterwards sold and conveyed the estate to *D.* *D.* had notice of *B.*'s security. Held, that it was unnecessary to determine whether *C.* took with notice of *B.*'s incumbrance, as by the deposit he could take only such interest as the heir could give, namely, his interest subject to the equitable charge of the ancestor; and, secondly, that the conveyance to *D.* was void as against *B.* *Tyles* v. *Webb.* vol. 6, p. 552

2. In 1829 *A.* was admitted to a copyhold, and in 1832 he deposited the copy of his admission with *B.* as a security. In 1837 *A.*'s heir, after admission, attempted to sell the property without effect. *C.* acted therein as his attorney, and *D.* as the clerk of *C.* On the 20th of *July*, 1837, *A.*'s heir mortgaged the property to *C.* by deposit of his own admission. In this transaction, *D.* acted as the agent and clerk of *C.* and as the agent of the heir. It appeared that in *November* 1835 *D.* had notice of *B.*'s incumbrance, and that on the 19th of *July* 1837 *D.* knew that the produce of the sale was to be applied

in discharge of *B.*'s demand. Held, that the knowledge which *D.* possessed in *November* 1835 could not be imputed to *C.* in 1837. Secondly, that *D.*'s knowledge in *July* 1837 that the proceeds of the sale were to be applied in discharge of *B.*'s demand, did not clearly shew, that even he, at that time, recollected or knew that which he had known in *November* 1835; and, thirdly, *semble*, that *C.* who knew that the party from whom he took it had been admitted only as heir, and that the ancestor had been admitted under copy of Court Roll, dated in 1829, must be deemed that the ancestor, having the copy of Court Roll, might have created an equitable mortgage by deposit, and consequently that *C.* ought to have required its production before he advanced his money. *Tylee* v. *Webb*. vol. 6, p. 552

3. The mere production by a bond creditor of the title-deeds to the obligor's real estate, without explanation, neither constitutes an equitable mortgage, nor a sufficient ground for an enquiry before the Master. *Chapman* v. *Chapman*. vol. 13, p. 308

4. An informal document, signed by a trustee, who was indebted to the trust, construed to amount to an equitable mortgage in favour of the trust, notwithstanding a denial by the answer. *Baynard* v. *Woolley*, *Wearing* v. *Baynard*. vol. 20, p. 583

5. Title deeds were deposited by the Defendant with the Plaintiff as an indemnity against contingent payments, but there was no agreement to execute a formal mortgage. Before the Plaintiff had made any payment, he filed a bill to have a formal mortgage executed. Held, that he was not entitled thereto, but only to a memorandum signed by the Defendant specifying the terms of the deposit. *Sparle* v. *Whayman*. vol. 20, p. 607

6. Adjoining premises (*X.* and *Y.*), were respectively conveyed to a testator by deeds of 1840 and 1843 and then united. He devised them to his sons, who made an equitable mortgage by deposit of the deeds of *Y.* and the probate of the will. The mortgagee believed, from the sons' statement, that the whole property was comprised. Held, that the property *X.* was not comprised in the equitable mortgage. *Jones* v. *Williams*. vol. 24, p. 47

7. *A. B.*, being entitled to three properties, the title deeds of one of which were held by his bankers as a security, deposited the title deeds of the other two with *C. D.* as a security for a debt, and he gave him an order to the bankers (written by himself, but not signed) to deliver over the deeds of the third property when their lien had been satisfied: —Held, that this gave *C. D.* a valid equitable mortgage on the property mortgaged to the bankers. *Daw* v. *Terrell*. vol. 33, p. 218

8. *A.* mortgaged some property to *B.* by deposit of deeds, with a written engagement to execute a mortgage when called on. *A.* next sold and conveyed the legal estate to *C.*, subject to the mortgage. Afterwards *A.* executed the mortgage to *B.* This contained a power of sale, under which *B.* sold the property to the Plaintiff:—Held, that *C.* was bound by the power of sale and the sale, and that he was a trustee for the purchaser. *Leigh* v. *Lloyd*. vol. 35, p. 455

9. *A.* by deed mortgaged freeholds to *B.* At the same time, the title deeds not only of the freeholds but of leaseholds belonging to *A.* were delivered to *B.* Held, in the absence of proof to the contrary, that *B.* had no lien on the leaseholds for the money advanced. *Wardle* v. *Oakley*. vol. 36, p. 27

EQUITABLE WASTE.

[*See* WASTE.]

EQUITY OF REDEMPTION.

[*See* MORTGAGE (EQUITY OF REDEMPTION.)]

EQUITY TO A SETTLEMENT.

1. A wife established her right to a settlement, as against her husband's assignees, to the extent of one half of the fund: —Held, that she could not afterwards waive the making of the settlement so as to defeat the rights of her children. *Whittem* v. *Sawyer*. vol. 1, p. 593

2. The wife's equity to a settlement does not attach upon filing a bill; if, therefore, the wife dies without making any claim to a settlement out of her legacy, her children, after her death, have no right to one. *De La Garde* v. *Lempriere*. vol. 6, p. 344

3. The wife's equity to a settlement attaches to her life interest. *Wilkinson* v. *Charlesworth*. vol. 10, p. 324

4. Husband and wife made an assignment of the wife's interest in a reversionary fund, which afterwards fell into possession. It was mutually imputed and not denied, that they were both living separate and in adultery. Held, that the wife was entitled to a settlement out of the fund. *Greedy* v. *Lavender*. vol. 13, p. 62

5. The whole of a fund to which the hus-

band in right of his wife had become entitled, settled, as against his assignee, on the wife and children, the husband being in reduced and insolvent circumstances. *Marshall* v. *Fowler*. vol. 16, p. 249

5a. A married woman was entitled to 60*l.* in Court, but, on her marriage, she was indebted to the extent of 100*l.*, which had been proved under the husband's bankruptcy. Held, that the assignees were entitled to the whole fund. *Bonner* v. *Bonner*. vol. 17, p. 86

6. Upon the consent of a married woman, 377*l.*, to which her husband was entitled in her right, was ordered to be paid to him. He had been insolvent eighteen years previously, and his assignee having claimed the money, the order was rescinded, and the whole fund ordered to be settled, notwithstanding the opposition of the assignee. *Watson* v. *Marshall*. vol. 17, p. 363

7. To save expense, the terms of settlement of a small sum were embodied in the order. *Ibid.*

8. Three-fourths of a legacy of 400*l.* belonging to a wife (after payment of the costs) settled as against a particular assignee of the fund, the husband having nine years before become bankrupt, and *semble*, that the whole would have been settled but for negociations between the parties for several years, which had involved the assignee in considerable expense. *Walker* v. *Drury*. vol. 17, p. 482

9. A wife's equity to a settlement includes all unsettled property to which she is entitled, whether it be vested in her in interest before or after the marriage. *Barrow* v. *Barrow*. vol. 18, p. 529

10. In the absence of any contract to that effect, the settlement of part of a wife's present property does not deprive her of her right to a settlement out of the residue. *Ibid.*

11. A sum of 462*l.* stock, to which a married woman, the wife of an insolvent, was entitled in remainder in her own right at the time of the insolvency, having fallen into possession, a settlement of the whole sum, after payment of costs, was directed to be made for the benefit of the wife and children, against a purchaser from the official assignee of the husband. *Francis* v. *Brooking*. vol. 19, p. 347

12. The Court, under very peculiar circumstances, ordered the whole income of a fund in Court belonging to a *feme covert*, who had committed adultery, to be paid to her on terms. *In re Lewin's Trust*. vol. 20, p. 378

13. The whole of a life interest in a fund belonging to a *feme covert* was given (under the circumstances) to her, in exclusion of all right of the assignee in insolvency of the husband, though the husband and wife were living together. *Kocber* v. *Sturgis*. vol. 22, p. 588

14. A *feme covert* was entitled to a life interest in personal property producing 72*l.* a year. She filed a bill against the trustee, the assignee in insolvency of her husband, and her husband, claiming the whole income. The Court directed it to be paid to her, though she was in the receipt of a further income of 40*l.* a-year, and was living with her husband. *Squires* v. *Ashford*. vol. 23, p. 132

15. Property of the wife, amounting to 17,000*l.* Consols, being already settled, the Court refused to settle a further sum of 2,000*l.* belonging to her, and directed it to be paid to the husband. *Spicer* v. *Spicer*. vol. 24, p. 365

16. The Court discourages applications to it involving the merits of petty squabbles between husband and wife. *Ibid.*

17. A wife obtained an order for protection under the 20 & 21 *Vict.* c. 85, s. 21. Held, that she was entitled to payment of a fund in Court representing a legacy bequeathed to her. *In re Kingsley's Trust*. vol. 26, p. 84

18. A wife has no equity to a settlement out of her life interest, as against the husband's assignee for value. *Re Duffy's Trust*. vol. 28, p. 386

19. A testator devised a real estate charged with a sum of 1,000*l.*, payable to a married woman, with powers by entry, sale or mortgage to recover it. Her husband assigned the 1,000*l.* for valuable consideration. A demurrer of the purchasers, to a bill of the wife to have the charge raised and have a settlement out of it, was overruled, and on the owner of the estate paying the amount into Court, an injunction was granted to restrain the purchaser from proceeding against him at law. Afterwards, at the hearing of the cause, the husband being insolvent, the whole 1,000*l.* was settled. *Duncombe* v. *Greenacre*. vol. 28, p. 472

20. A sum of 1,000*l.*, charged exclusively on real estate with powers of entry, sale and mortgage to secure it, was bequeathed to a married woman. The whole was ordered to be settled on her and her children to the exclusion of the mortgagees of her husband, who had taken the benefit of the Insolvent Act. *Duncombe* v. *Greenacre*. (No. 2.) vol. 29, p. 578
(See *Re Cutler*. vol. 14, p. 220)

21. A husband assigned his interest in his wife's property for value, and afterwards took the benefit of the Insolvent Act. Held, that the wife was entitled to a settlement of the whole *corpus*, but not to the arrears of income. *Newman* v. *Wilson*. (No. 2.) vol. 31, p. 34

ESCHEAT.

1. A testator died without heirs, seised of freeholds which he had not charged with his debts. Held, that, as against the lord claiming by escheat, they were assets for the payment of the testator's debts. *Evans* v. *Brown.* vol. 5, p. 114
2. Whether such freeholds are liable to the debts in priority to or *pari passu* with lands specifically devised. *Ibid.*
3. *A. B.* makes a mortgage in fee, and dies intestate and without heirs. Held, that the equity of redemption does not escheat to the crown, but belongs to the mortgagee, subject to the debts. *Beale* v. *Symmonds.* vol. 16, p. 406
4. A testator devised a real estate to his widow for life, and at her death to trustees to sell and pay part of the proceeds to *B.*, who committed a felony, but had undergone his punishment before the widow's death. Held, that this interest was not forfeited to the crown, but a vested interest in other property was. *In re Thompson's Trust.* vol. 22, p. 506
5. In 1833 *A. B.* was convicted of felony, and transported. At this time, his wife was entitled to a fund, contingently on her surviving her mother. In 1846, *A. B.* obtained a conditional pardon, available in all places except the United Kingdom. The mother died in 1838, and the wife in 1852. On a petition by the crown for payment, the Court, without deciding the right, merely ordered payment to the administrator of the wife. *Re Harrington's Trusts.* vol. 29, p. 24
6. Estates of inheritance of a *felo de se* do not escheat to the crown. *Norris* v. *Chambers.* vol. 29, p. 246
7. A clerk, having robbed his employers of money, gave them, upon the discovery of his frauds and before his prosecution, an equitable security on policies and lands for the amount. He was afterwards prosecuted and convicted. Held, that the debt was a good consideration for the securities, and that they were valid. *Chowne* v. *Baylis.* vol. 31, p. 351
8. After the commission of a felony, and before his conviction, a felon may sell or assign over his personal property for valuable consideration. And a debt existing at the time of the commission of the offence is a sufficient consideration to support such an assignment. But the sale must be *bonâ fide*, and not colourable and merely for the purpose of avoiding the forfeiture on conviction. *Ibid.*

ESCROW.

A. mortgaged property to three trustees, *B.*, *C.* and *D.* Some time after *B.*, who was a solicitor, having in his hands a sum belonging to a client, *E.* proposed to lay it out on a transfer of the mortgage He prepared a transfer, which was executed by *A.*, *B.* and *C.*, but not by *D.*, and a receipt for the money was signed by *B.* and *C.* alone. No money was ever paid, and it was lost by *B.*'s insolvency. Held, that the alleged transfer to *E.* was ineffectual, the consideration not having actually been paid, and that in equity the deed was inoperative both as against the mortgagor and the three trustees. *Griffin* v. *Clowes.* vol. 20, p. 61

ESTATE AND EFFECTS.

[*See* ABSOLUTE INTEREST, DESCRIPTION OF GIFT.]

The word "estate," in a will, will *primâ facie* pass real estate, and the burthen of proof lies on those who contend the contrary. *Patterson* v. *Huddart.* vol. 17, p. 210

(See *Coard* v. *Holderness.* vol. 20, p. 147)

ESTATE IN FEE.

1. A testator devised and bequeathed his real and personal estate to his wife and three other persons, and their heirs, executors, &c. for ever, upon trust, for his wife to receive the rents for life; and, after her decease, upon trust "to pay and divide" the rents among his children as they attained twenty-one, and after their decease, to pay the principal of their respective shares unto their legal representatives, their executors, administrators and assigns. He gave power to the trustees to sell, with power of maintenance out of the rents, and advancement out of the principal of their shares; and in case any of his freehold estates should not be sold by his said trustees, then, from and after the decease of his said children, he devised the same unto their respective heirs and assigns, as tenants in common. And he directed, that the receipts and conveyances of his said trustees to any purchasers of any part of his estate and effects, should be good discharges and assurances. Held, that the trustees took the legal fee, and that the children were entitled to equitable estates for life, with equitable remainders to their heirs, which, united, gave them equitable estates in fee simple. *Reynell* v. *Reynell.* vol. 10, p. 21
2. Devise to trustees and their heirs, upon trust, for the use and benefit of *A. B.* and *C.* (without words of limitation). Held, that *A.*, *B.* and *C.* took in fee. *Moore* v. *Cleghorn.* vol. 10, p. 423

3. Devise to testator's daughter "and her lawful heirs," "but in case she should not happen to leave any child," then to his nephew and his heirs. Held, that the daughter took a fee simple, with an executory devise over to the nephew. *Mathews* v. *Gardiner*. vol. 17, p. 254
4. Devise of "my property in houses, &c. at *G.*," held (independently of the Wills Act) to pass the fee. *Bentley* v. *Oldfield*. vol. 19, p. 225
5. A testator appointed *A. B.* "his universal heir." Held, that these words were sufficient, if uncontrolled, to give the fee simple. *Jenkins* v. *Lord Clinton*. vol. 26, p. 108
6. A testator, subsequently to the Wills Act, gave to *A. B.* the house she lived in and grass for a cow in *Gill Field*. Held, that she took an estate in fee simple in the house, and the right of pasture of a cow during her pleasure. *Reay* v. *Rawlinson*. vol. 29, p. 88
7. A testator in 1857 devised freeholds to trustees to pay the rents to his five children "or their heirs." Held, that the children took a fee. *Adshead* v. *Willetts*. vol. 29, p. 358
8. A testator devised his real and personal estate to trustees and their heirs, upon trust to sell, if expedient, and invest in Consols, and permit his wife *durante viduitate* to receive the rents and dividends, and from and after her decease or second marriage, to divide "the residue of his estate and effects" between his children [without words of inheritance]. Held, that (subject to the wife's interest) the children took the real estate absolutely. *Tatham* v. *Vernon*. vol. 29, p. 604

ESTATE PUR AUTRE VIE.

1. A leasehold for lives, limited to one and his heirs, was devised to trustees in trust for *A.* and his heirs. *A.* died intestate and without heirs. Held, that the leaseholds *pur autre vie* passed under the 6th section of the Wills Act to *A.*'s administrator, and did not belong to the trustees. *Reynolds* v. *Wright*. vol. 25, p. 100
2. Estates *pur autre vie* were devised to *A.* for life, with an ultimate limitation to *A.*, subject to some intervening contingent limitations to other persons. Held, that *A.* could not destroy the intermediate contingent interests. *Pickersgill* v. *Grey*. vol. 30, p. 352

ESTATE TAIL.

[*See* HEIR, ISSUE.]

1. *A.* devised to *B.* an estate during the life of herself and her husband, and after their deceases to the lawful issue of *B.*'s body for ever. Held, that *B.* took an estate tail. *Griffith* v. *Evan*. vol. 5, p. 241
2. The words "lawful heirs," held, upon the context of a will, to mean "heirs of the body." *Simpson* v. *Ashworth*. vol. 6, p. 412
3. A testator, having several children, directed the purchase of an estate for one of his daughters, "for her use and her lawful heirs," to be returned "if she died without lawful heirs," to the other children that had heirs. Held, upon the context, that "lawful heirs" must be construed "heirs of the body;" that the daughter took an estate tail, and that the gift over was also an estate tail. *Ibid.*
4. A tenant in tail in remainder of copyholds became bankrupt, and by the custom, the entail could not be barred until it fell into possession. The bankrupt obtained his certificate, and purchased of his assignees his life estate only. On the subsequent death of the tenant for life, held, that the assignees had then no power to bar the entail and acquire the remainder in fee, subject to the life estate sold to the bankrupt. *Johnson* v. *Smiley*. vol. 17, p. 223
5. An estate, vested in a trustee in fee, was directed to be held by him for a *feme sole* for life, independent of any husband, and in case she should leave issue, "the property shall pass to such issue as she may direct," with a gift over "in case she should die without issue." Held, that she took an estate tail. *Tierney* v. *Wood*. vol. 19, p. 330
6. Devise to *A.* for life, with remainder to *B.* and his heirs, but if *B.* died in the life of *A.* "without leaving lawful issue," then immediately after the death of *A.* the lands were to be sold and the produce divided. And in case *B.* should outlive *A.*, and die "without leaving any lawful issue," then the lands were to be sold by *B.*'s "executors" and the proceeds divided. *B.* survived *A.* Held, that he took an estate tail, and not an estate in fee with an executory devise over, and therefore that he could make a good title to a purchaser. *Feakes* v. *Standley*. vol. 24, p. 485
7. The settlor conveyed real estate to trustees in fee, to the use of *A.*, *B.*, *C.* and four others successively, for life, and afterwards upon trust to convey to all and every the sons and daughters of the eight tenants for life, "who should be then living, and to the heirs male and female of his, her and their body and bodies respectively, in a course of entail," the sons and daughters of *A.*, and their heirs, to take before all the other persons named, and the sons and daughters of *B.*, and their heirs, to take next after the

sons and daughters of *A.* and their heirs (and similar as to the five others in succession). And the sons of *all and every the persons* last above named and the heirs, &c. to take before the daughters and their heirs. Held, that the daughters of *A.* took in priority of the sons of *B.* *Randall* v. *Daniel.* vol. 24, p. 193

8. A testator devised real and personal estate to *A.* for life, with a direction to the executors, after *A.*'s death, to divide it amongst all her children "and their lawful issue, share and share alike." There was a gift over of the leaseholds to other persons on a total failure of issue of the children. Held, that the children took estates tail in the realty and absolute interest in the personalty, and that cross-remainders were not to be implied in regard to the leaseholds. *Beaver* v. *Nowell.* vol. 25, p. 551

9. General intent to create estates tail held to prevail, notwithstanding inconsistent expressions. *Jenkins* v. *Lord Clinton.* vol. 26, p. 108

10. A testator devised real estates to his son and his heirs, but without power of selling them, and he willed that they should, "at his death," go to his lawful issue absolutely, and if his son should not have any lawful issue him surviving, then over. Held, that the son took an estate tail. *Marshall* v. *Grime.* vol. 28, p. 375

11. Under a devise of real estate, "to be divided equally between my two sons, who shall enjoy the interest thereof, and then go to their respective families according to seniority." Held, that the sons took as tenants in common in tail general. *Lucas* v. *Goldsmid.* vol. 29, p. 657

12. Devise to *A.* for life, and from and after her decease unto the heirs of her body, they to take the freehold and inheritance thereof as tenants in common, and in default of such heirs of the body of *A.* unto the testatrix's own right heirs. Held, that *A.* took an estate tail. *Anderson* v. *Anderson.* vol. 30, p. 209

ESTOPPEL.

1. Under a decree in a legatee's suit to take the usual accounts, *A. B.* went in and claimed the residue, which the Master found him entitled to; but the residue was not then ascertained, and no order was made in respect of it. Held, that *A. B.* was not precluded from afterwards asking relief against the executor, in respect of an alleged breach of trust, in a suit of his own, he not having, in the first suit, been in a situation to investigate the accounts of the executor, or to claim the relief which he asked in the second. *Guidici* v. *Kinton.* vol. 6, p. 517

2. A judgment creditor was allowed to file a bill to establish his priority over subsequent incumbrancers, though their rights *inter se* had been decided in a former suit. *Smith* v. *Earl of Effingham.* vol. 7, p. 57

3. If a party has been induced, by fraud, to consent, or has, by mistake, consented to a decree, the Court has the power to relieve him, and will do so, upon being satisfied that fraud or mistake existed, that the conduct of the party himself had not deprived him of the title to relief, and that the relief can be given, with due regard to the just interests of others. *Davenport* v. *Stafford.* vol. 8, p. 503

4. A demurrer allowed to a bill, filed without leave, for relief, inconsistent with the relief obtained by the same Plaintiff in a former suit. *Bainbrigge* v. *Baddeley.* vol. 9, p. 538

5. A testator devised and disposed of his English and Scotch estates in strict settlement, and he directed his trustees and the survivor, and the executors, administrators, and assigns of such survivors, to invest his personal estates in lands in *England* OR *Scotland*, to be settled according to the uses of his estates in those countries respectively. And he empowered the person for the time being in possession of his English estates, or his guardian, to appoint new trustees, who were to have the same powers as the old. After the testator's death, the principal part of the property was invested in *Scotland.* In 1833, the trustees being all dead, the representative of the survivor declined to act. The English estate then stood limited to *A.* an infant, in tail, with remainders over, and the Scotch estate to *A.* for an unalienable estate in fee, with remainders to his heirs male, with remainders to *B.*, *C.*, *D.*, &c. the Plaintiff and others, for similar unalienable estates in succession. In 1833, *A.* filed a bill against the representative of the surviving trustee and against *B.*, and some other parties coming subsequent in the Scotch estate to the Plaintiff, but omitting the Plaintiff, insisting that too much of the personalty had been invested in *Scotland.* *B.* appeared voluntarily and put in his answer. Before the decree, *A.* had a guardian appointed, and, by the decree made in 1833, the existing trustee, at his own request, was discharged and the Master was directed to appoint new trustees; and it was declared, that the uninvested personalty ought to be invested in *England.* *A.* afterwards executed disentailing deeds, and obtained payment of the whole fund. By the death of *A.* and the other preceding per-

sons without issue, the Plaintiff became entitled in possession to the Scotch estates, and he thereupon instituted this suit to be relieved from the decree of 1833. Held, that he was not bound by that decree, and, secondly, that he was entitled to obtain relief by original bill. *Fordyce* v. *Bridges*. vol. 10, p. 90

6. A marriage was solemnized between *A.* and *B.*, but it was declared void by the Ecclesiastical Court. Some years afterwards a child of *A.* and *B.*, *en ventre sa mère* at the time of the sentence, and who necessarily was no party to the proceedings, claimed property in this Court, as descendant of *A.* Held, first, that he was bound by the sentence, though he might avoid its effect by shewing fraud and collusion in obtaining it; secondly, that such fraud and collusion must be shewn to have taken place between the parties to the proceedings; and, thirdly, that proof that the costs of the unsuccessful party had been agreed to be paid, that witnesses were not examined, and others not cross-examined, and that difficulties were not interposed which might have been, did not, together, amount to proof of fraud and collusion. *Perry* v. *Meddowcroft*. vol. 10, p. 122
7. Legatees and annuitants are bound by the proceedings in a suit for administration, between the executors and residuary legatees and devisees; although there may be a question as to the debts being primarily charged on the real estate, and which may incidentally affect them. Therefore, after decree in such a suit, legatees cannot sustain an administration suit against the executors. *Jennings* v. *Paterson*. vol. 15, p. 28
8. Observations on the serious inconvenience arising from one Court interfering in a matter already determined by another Court of co-ordinate jurisdiction. *In re Barber*. vol. 19, p. 378
9. In an action at law for calls by a company against a shareholder, he pleaded fraud, but the company obtained a verdict. The company having afterwards been ordered to be wound up: Held, that the verdict did not prevent the shareholder insisting that he was not a contributory, he having been induced to take the shares through the fraudulent misrepresentations of the company. Having proved his case here, the Court, notwithstanding the verdict, refused to place him on the list of contributories. *Ayre's Case, In re The Deposit and General Life Assurance Company*. vol. 25, p. 513
10. By a deed between the trustees and *W. H.* (the residuary legatee and devisee), a particular estate was reserved by the former as a security for a legacy which had not been provided for when the personal estate was handed over to *W. H.* Held, that the operation and effect of the deed was confined to the parties to the instrument. *Hepworth* v. *Hill*. vol. 30, p. 476
11. A patentee established the validity of his patent in an action against *A. B.* Held, in a subsequent suit by the patentee against *C. D.*, that *C. D.* was not concluded by the proceedings at law, to which he was not a party, and that he was not to be driven to contest the validity of the patent by *scire facias*. *Bovill* v. *Goodier*. vol. 35, p. 427
12. After a patentee had established his patent as against one person at law, he instituted proceedings for an infringement against another in equity. The Court granted the Defendant an issue as to the novelty of the invention, but refused it as to the utility of the invention and the sufficiency of the specification, holding that the utility was not contested or had been proved in the suit, and that the sufficiency of the specification had been already decided in the action at law, a decision in which this Court, so far as it was matter of law not depending on the novelty of the invention, concurred. *Ibid.*

EVIDENCE.

[*See* ADMISSION, AFFIDAVIT, ENTERING EVIDENCE AS READ, EVIDENCE (DOCUMENTARY), EVIDENCE (TAKEN IN OTHER SUIT), EVIDENCE (TIME FOR CLOSING), IDENTITY, INQUIRIES (EVIDENCE ON), INTERROGATORIES, OFFICE COPIES, PAROL EVIDENCE, PRESUMPTION, SWEARING AFFIDAVITS, &c., WITNESS.]

1. A mortgagee had a power of sale in case of default being made in payment of mortgage money. Held, that the unsupported solemn declaration, under the 5 & 6 *W.* 4, c. 62, of the mortgagee alone, of a default having been made, was not sufficient evidence of that fact, as between vendor and purchaser. *Hobson* v. *Bell*. vol. 2, p. 17
2. Evidence of conversations not put in issue is inadmissible, but where conversations are alleged in the answer, evidence is admissible on the part of the Plaintiff to shew their effect, notwithstanding they are not stated in the bill. *Graham* v. *Oliver*. vol. 3, p. 124
3. Observations on traditionary evidence in pedigree cases, and its fallibility. It is not to be wholly rejected because error is proved as to part. *Johnston* v. *Todd*. vol. 5, p. 597
4. Allegations and admissions, used for the purpose of defence against attempted extortion under the form of legal proceedings or for the purpose of obtaining justice irregularly when regularly it

could not be had, ought not to be used as evidence of the rights of the parties. Held, consequently, that allegations and admissions made in the course of arbitrary proceedings against parties in the Star Chamber and in a treaty for compromise which arose out of the sentence, and in the proceedings which took place before the House of Commons in an attempt to obtain relief from the oppression of that Court, could not in any way influence the judgment of this Court. *The Skinners' Company* v. *The Irish Society.* vol. 7, p. 593

5. Under special circumstances, accounts between master and servant, tradesmen and shopmen, banker and customers, are, from the necessity of the case and the convenience of mankind, admitted as evidence in favour of the party writing them; but the Master ought not to receive such evidence without stating the special circumstances under which he conceives them receivable in evidence. *Symonds* v. *The Gas Light and Coke Company. The Gas Light and Coke Company* v. *Symonds.* vol. 11, p. 283

6. In pedigree cases, if one link be assumed, any two persons may be proved to be related; and, therefore, in such cases, the difficulty usually consists in properly weighing and considering the evidence relating to the connecting link. *Crouch* v. *Hooper.* vol. 16, p. 182

7. In pedigree cases, it is a rule of evidence, that the declarations of deceased members of the family, *post litem motam*, are inadmissible; and anterior declarations are little to be regarded, unless corroborated by other circumstances. *Ibid.*
(See *Webb* v. *Haycock.* vol. 19, p. 342)

8. Evidence of the general reputation of the insanity of a person, in the neighbourhood in which he resided, is inadmissible to prove that a person was cognizant of that fact. *Greenslade* v. *Dare.* vol. 20, p. 284

9. The Court will not act on the testimony of a single witness against the express denial on oath of the Defendant; but where the written evidence has been destroyed by the Defendant *pendente lite*, the Court will assume that, if forthcoming, it would have proved the statement of the single witness. *Gray* v. *Haig, Haig* v. *Gray.* vol. 20, p. 291

10. Entry of a payment of a deceased person against his interest, held admissible. *Orrett* v. *Corser, Corser* v. *Orrett.* vol. 21, p. 52

11. Entry by a deceased person shewing (in contradiction to a deed evidencing a rightful payment by him) that the payment had been made in breach of trust to *A. B.* instead of to the trustees, held admissible in evidence to shew the receipt by *A. B.*, on the ground that such entry tended to charge the maker of it. *Orrett* v. *Corser, Corser* v. *Orrett.* vol. 21, p. 52

12. Little reliance is to be placed on the evidence of surveyors in a contest as to value. *Waters* v. *Thorn.* vol. 22, p. 547

13. Whether any part of the evidence in chief can be taken orally, on a motion for a decree, *quære*. *Pellatt* v. *Nicholls.* vol. 24, p. 298

14. The finding of a jury or a coroner's inquest held to throw the burthen of proof in a civil case on the party alleging the contrary. *The Prince of Wales, &c. Assurance Company* v. *Palmer.* vol. 26, p. 605

15. The evidence taken by any parties to a cause may be used by any of the other parties. *Sturges* v. *Morse.* vol. 26, p. 562

16. Evidence of the notoriety of a fact in a neighbourhood rejected. *Wentworth* v. *Lloyd.* vol. 32, p. 467

17. Family repute admissible to shew that a legatee was the godson of the testator. *Re Gregory's Settlement.* vol. 34, p. 600

18. It is not absolutely necessary that the evidence before an arbitrator should be taken on oath, the parties may waive it. *Wakefield* v. *Llanelly Railway and Dock Company.* vol. 34, p. 245

19. A former will of a testator held admissible evidence on a question as to which of two persons was intended to take as legatees. *Re Gregory.* vol. 34, p. 600
(*Down* v. *Ellis.* vol. 35, p. 578)

EVIDENCE (DE BENE ESSE).

1. *Ex parte* order for the examination, *de bene esse*, of a soldier under military orders to proceed abroad in about six days for six or seven years, held regular. *M'Kenna* v. *Everitt.* vol. 2, p. 188

2. An *ex parte* order for the examination, *de bene esse*, of a witness "in her seventieth year, and very weak and infirm, and from her advanced years not likely to live long," discharged for irregularity, on the ground that she did not come within the rule, not being "seventy years of age," and not being in a "dangerous state of health. *Ibid.*

3. Form of decree, in a suit against parish commissioners, to enforce payment of debentures on the parish rates under a special act. *Fletcher* v. *Gibbon.* vol. 23, p. 212

4. Debenture holders under an act were to be entitled *pari passu*. One debenture holder attempted to obtain an advantage over the rest by means of additional mortgage. Held, that it was invalid. *De Winton* v. *Mayor, &c. of Brecon.* vol. 26, p. 533

5. Railway debentures were granted, by

which the "undertaking, and all tolls and sums of money arising by virtue of the act, and all estate, right and interest of the company," were assigned to the debenture creditors. Other creditors subsequently obtained judgments against the company, and afterwards, by authority of an act of parliament, the railway was sold, and the purchase-money paid into Court. Held, that the debentures, being prior in date, had priority over the judgments as against the purchase-money. *Furness* v. *The Caterham Railway Company.* vol. 27, p. 358

6. A company granted debentures, whereby they charged "all the lands, tenements and estates of the company and all their undertaking." Held, that the unpaid calls and the capital not called up were not charged by such debentures. *King, on behalf, &c.* v. *Marshall.* vol. 33, p. 565

EVIDENCE (DOCUMENTARY).

1. A will thirty years old, produced from the proper custody, proves itself. The thirty years are to be computed from the date of the will, and not from the death of the testator, and are calculated as at the time of its production. *Man* v. *Ricketts.* vol. 7, p. 93
2. The evidence of "experts," as to the age of a document and the character of the handwriting, may, in some cases, be valuable. *Crouch* v. *Hooper.* vol. 16, p. 182
3. A married woman was alleged to have executed an appointment in 1800, and to have destroyed it. In 1813, disputes having arisen between her and the appointees, she and her husband executed a deed of compromise, which recited the appointment of 1800, and that she had destroyed it. Held, in a contest between the appointees and a party claiming under her will, that the deed of compromise was admissible in evidence, as was also the draft bill of costs of her solicitor and a draft of the deed of 1800, found in his possession. Held, also, that this evidence (after a lapse of forty years) established the fact of her execution of the appointment in 1800. *Dine* v. *Costobadie.* vol. 17, p. 140
4. Recital of the death of a prior tenant for life in a private act of parliament. Held, upon an application by a subsequent tenant for life for payment of the income, to be insufficient evidence of the death. *Cowell* v. *Chambers.* vol. 21, p. 619
5. Entries in a deceased solicitor's books, in his handwriting, relating to a deed prepared by him, and executed by a deceased client, held good evidence. *Rawlins* v. *Rickards.* vol. 28, p. 370
6. A solicitor professed to act for the Plaintiff in a matter, in respect of which the Plaintiff instituted proceedings twenty years afterwards. The solicitor being dead, the Court concluded that he had authority to act for the Plaintiff, notwithstanding the Plaintiff's positive denial, and *held*, that the letters of the solicitor, written on behalf of the Plaintiff to the trustees, were good evidence against the Plaintiff. *Bright* v. *Legerton.* (No. 1.) vol. 29, p. 60
7. A bill of costs and a cash account of the deceased solicitor of trustees, held admissible in evidence, in a suit instituted by the *cestui que trust*, twenty years afterwards, to charge his trustees. *Ibid.*

EVIDENCE TAKEN IN OTHER SUIT.

1. An issue being directed which was to be conducted on one side by persons not parties to the cause, the Court refused to direct the depositions and affidavits used in the cause of witnesses who had since died, to be read on the trial of the issue. *Johnston* v. *Todd.* vol. 3, p. 218
2. A cause and cross-cause were attached to the Vice-Chancellor's Court. After publication had passed in the original cause, but before it had passed in the cross-cause, a Defendant obtained an order of course, at the Rolls, for liberty to use the original depositions "taken" in the cross-cause. Held, that it had not been irregularly obtained. *Sowdon* v. *Marriott.* vol. 9, p. 416
3. Seven months after notice of motion for a decree, the Defendant had given material evidence in another cause. On the application of the Plaintiff, nine days afterwards, the Court gave leave to use the additional evidence, though the cause was on the paper, but permitted the Defendant to explain it. *Watson* v. *Cleaver.* vol. 20, p. 137
4. *A.*, without authority, sold a trust estate to *B.* In a suit to recover the money from *A.*, *B.*, who was not a party, was examined as a witness. A suit was afterwards instituted against the representatives of *B.*, to recover the estate itself, and an order of course was obtained in it to use the depositions in the former suit, saving just exceptions. It was discharged as irregular. *Hope* v. *Liddell.* (No. 2.) vol. 21, p. 180

EVIDENCE (TIME FOR).

1. Master's jurisdiction to enlarge publication. *Anonymous.* vol. 5, p. 92
2. When the Plaintiff obtains an unconditional order to enlarge publication, the

Defendant can neither set down the cause, nor serve *subpœna* to hear judgment until the time has expired. Having contravened this rule, an order was made to quash the *subpœna*, and to strike the cause out of the cause paper. *Langley* v. *Fisher*. vol. 5, p. 588

3. An application for liberty to use further evidence, on a motion for a decree, cannot be made *ex parte*. *Richards* v. *Curlewis*. vol. 8, p. 462

4. The Master enlarged publication, and on that occasion, evidence was produced that the Defendant had not seen the depositions. Immediately afterwards, an application was made for an additional commission, which the Master granted without any further evidence that the Defendant had not seen the depositions. Held, that it was not necessary to bring forward further proof, the Master having already in his office evidence of the fact, and the Court refused with costs an application to set aside the proceedings. *Clark* v. *Chuck*. vol. 9, p. 414

5. After publication, the Plaintiff discovered material evidence: leave was given upon motion to examine witnesses to prove it. *Gregory* v. *Marychurch*. vol. 12, p. 275

6. When the evidence in a cause is taken orally, a general application, under the 36th section of the 15 & 16 Vict. c. 86, to be at liberty to use at the hearing affidavits already filed is irregular. The particular facts or circumstances proposed to be proved by affidavits should be specified both in the notice of motion and in the order. *Ivison* v. *Grassiot*. vol. 17, p. 321

7. By inadvertence, an affidavit was not filed until after the evidence had closed, though prepared before. The Court, on motion, gave liberty to use it, on payment of the costs of the motion. *Douglass* v. *Archbutt*. vol. 23, p. 293

EXAMINER.

1. The omission by an examiner to sign his name to the depositions of a witness, taken by him and returned to the Record and Writ Clerk's Office, is not such an irregularity as to prevent the Court from directing them to be filed on terms; but where witnesses were examined upon interrogatories and not orally, there having been great delay, the Court refused to order the depositions to be filed. *Stephens* v. *Wanklin*. *Stephens* v. *Salway*. vol. 19, p. 585

2. Special examiners are entitled to a fee of five guineas a day only, and *semble*, their clerks are entitled to five shillings *per diem*. No extra fee is payable for extended time employed during a day, nor for the preliminary labour of reading the papers. *Payne* v. *Little*. vol. 21, p. 65

3. Disinclination of the Court to appoint special examiners, on account of the great expense it entails on the suitor. The Master of the Rolls will not appoint one except in cases of absolute necessity. *Brocas* v. *Lloyd*. vol. 21, p. 519

EXCEPTIONS.

[*See* EXCEPTIONS TO ANSWER, EXCEPTIONS TO CERTIFICATE.]

EXCEPTIONS TO ANSWER.

[*See* ANSWER, DISCOVERY, IMPERTINENCE.]

1. An exception for impertinence must be supported *in toto*, or will fail altogether. *Tench* v. *Cheese*. vol. 1, p. 571

2. Exceptions to an answer for insufficiency will not fail on account of their not following literally the words of the interrogatory, provided the variation be not important. *Brown* v. *Keating*. vol. 2, p. 581

2*a*. The Plaintiff's right to except to the Defendant's answer for insufficiency, is not waived by a motion for production of papers, founded on admissions in the answer.

It is unnecessary in such a case to move "without prejudice to the Plaintiff's right to except." *Lane* v. *Paul*. vol. 3, p. 66

3. The Court, to prevent delay, will advance for an early hearing exceptions to the Master's report on a reference for impertinence. *Holmes* v. *The Corporation of Arundel*. vol. 3, p. 407

4. Where a Defendant, in contempt for want of answer, files it without paying or tendering the costs of contempt, but which are afterwards accepted by the Plaintiff, the time to except runs from the filing of the answer, and not from the acceptance of the costs. *Nicklin* v. *Patten*. vol. 4, p. 126

5. An application to advance the hearing of exceptions should be made on notice, and not *ex parte*. *Marshall* v. *Mellersh*. vol. 5, p. 496

6. Exceptions to an answer ought to specify, not only the cause, but the pleading to which the answer has been put in. *The Earl of Lichfield* v. *Bond*. vol. 5, p. 513

7. Notice of exceptions was not given until a day too late, and was intituled wrongly. The Court relieved the party from the effects of the irregularity on payment of costs. *Bradstock* v. *Whatley*. vol. 6, p. 61

8. Exceptions being allowed, the Plaintiff

obtained an order to amend, and that the Defendants might answer the exceptions and amendments together. Before this order had been served, the Defendant put in a further answer. Held regular, and the order was discharged. *Hemming* v. *Dingwall.* vol. 8, p. 102

9. In a transition case under the Orders of 1845, exceptions were filed one day too late; the Court declined to order them to be taken off the file. *Whitmore* v. *Sloane.* vol. 9, p. 1

10. Exceptions for insufficiency were referred by the Plaintiff to the *Master in rotation*, instead of to the Master to whom there had been a previous reference. Pending the discussion on the irregularity in the Master's office, the time limited for obtaining the report expired. The Court, considering the error to have arisen from inadvertence, and not from wilfulness or perverseness, gave directions to the Master to hear the exceptions. *Tuck* v. *Rayment.* vol. 9, p. 38

11. An order for leave to file exceptions in the form of *nunc pro tunc* will not now be made, even by consent, but a special order may be made for filing them, notwithstanding the time limited has expired. *Biddulph* v. *Lord Camoys.* vol. 9, p. 155

12. A reference of exceptions made *instanter* in an injunction case, and upon an *ex parte* motion. It is not an order of course, but a special case of prejudice must be made out by affidavit. *Muggeridge* v. *Sloman.* vol. 9, p. 314
(*Teesdale* v. *Swindell.* vol. 9, p. 491)

13. Defendants filed a demurrer and answer, and the demurrer being overruled, they obtained time to answer. They filed a further answer; on special application, leave was given to the Plaintiff to file exceptions thereto, although he had not filed any to the original answer. *The Attorney-General* v. *The Corporation of London.* vol. 12, p. 217

14. Exceptions for insufficiency will be overruled, if they vary, in a material particular, from the form of the interrogatory, as where the interrogatory is in the present tense and the exception is in the past. *The Duke of Brunswick* v. *The Duke of Cambridge.* vol. 12, p. 279

15. An omission to give notice of the filing of exceptions on the same day does not render a subsequent order of reference irregular: but the omission is matter of compensation in time, upon a proper application. *Lowe* v. *Williams.* vol. 12, p. 482

16. On the 6th of *March*, the Plaintiff took exceptions, but did not serve notice until the next day, and he obtained an order to refer on the 15th. A motion to discharge the order was refused. *Ibid.*

17. The filing of exceptions for impertinence may, before a reference of them, be shewn as cause against dissolving the common injunction. *Byng* v. *Clark.* vol. 12, p. 608

18. Where exceptions for impertinence are shewn as cause, the Plaintiff should be put under terms to obtain the Master's report within a limited time, although the General Orders do not provide for such a case. *Ibid.*

19. Exceptions for insufficiency were heard before the court in the first instance, under Sir *G. Turner's* Act, the costs of those allowed were set off against those disallowed. *Willis* v. *Childe.* vol. 13, p. 454

20. The costs on the allowance of exceptions for insufficiency may be made payable immediately. *Thomas* v. *Rawlings.* vol. 27, p. 375

21. A notice to set down the old exceptions after a second answer, did not specify which. Held, that it was irregular, and the Plaintiff was ordered to pay the costs of the Defendant's appearing to object; but liberty was given to him to amend the notice and set down the exceptions again. *Thomas* v. *Rawlings.* vol. 28, p. 346
(See *Fry* v. *Mantell.* vol. 5, p. 99
Emmott v. *Emmott.* vol. 12, p. 557)

EXCEPTIONS TO CERTIFICATE.

1. A single exception taken to the Master's certificate allowing four interrogatories, affirmed that "the Master ought not to have so certified, but ought to have disallowed such interrogatories." Held, that in order to succeed on the exception, it must be shewn that all the four interrogatories were improper. *Cotham* v. *West.* vol. 1, p. 380

2. All persons interested in the Master's report are entitled to be heard in support of it, but none but the excepting party can be heard against it. *Bonser* v. *Cox.* vol. 4, p. 379

3. A party having obtained and served the order *nisi* to confirm the Master's report, may afterwards file exceptions thereto; and the time within which this may be done is unlimited until the order to confirm absolute is made; but it may be limited by an order *nisi* obtained by any other party, on the neglect of the party having the carriage of the report. *Richardson* v. *Horton.* vol. 5, p. 87

4. Exceptions to a certificate of good title held too general. *Flower* v. *Hartopp.* vol. 6, p. 476

5. Whether exceptions will lie to the Master's certificate of undue delay under the 8th Order of *June*, 1850 (Ord. xl. 31), *quære.* *The Attorney-General* v. *The Corporation of Chester.* vol. 14, p. 338

6. Exceptions will not lie to a Master's report for not stating "special circumstances." *Knott* v. *Cottee.* vol. 16, p. 82

EXCHANGE.

1. The Inclosure Commissioners can, under the provisions of the General Inclosure Act (8 & 9 *Vict.* c. 118), authorize an exchange though no inclosure is contemplated, which will be binding on persons under legal disability; and under their authority an exchange may be effected by parties having a limited interest of common socage tenure for lands of gavelkind tenure in different counties. *Minet* v. *Leman.* vol. 20, p. 269
2. Where under this act, gavelkind lands in *Kent* are exchanged for common socage in *Middlesex*, the tenures of the exchanged lands are not altered, but the *Kent* lands remain of gavelkind tenure, and the *Middlesex* lands of common socage tenure. (per the Master of the Rolls, *sed quære.*) *Ibid.*
3. The 94th section of the 8 & 9 *Vict.* c. 118, is confined to the exchanges in cases of inclosure mentioned in the 92nd section. *Ibid.*
4. The possible evils and inconveniences arising from the extensive powers of exchange given by the Inclosure Act (8 & 9 *Vict.* c. 18) are provided for by the appointment of commissioners, whose duty it is to ascertain and approve of the propriety of the exchanges before they can be effected. *Ibid.*

EXECUTOR.

[*See* ADMINISTRATION, ADMISSION OF ASSETS, BREACH OF TRUST, CONVERSION OF ASSETS, COSTS (ADMINISTRATION), CO-TRUSTEES' LIABILITY, DEVASTAVIT, EXECUTOR (BENEFICIAL INTEREST), EXECUTOR (EXPENSES), EXECUTOR (INDEMNITY), EXECUTOR (LEGACY TO), EXECUTOR (LIABILITY), PAYMENT INTO COURT, POWER TO SELL OR MORTGAGE, RETAINER OF DEBT, TRUSTEE.]

1. *A.* purchased a leasehold of *B.*, and paid the purchase-money, but no conveyance was executed. *A.* bequeathed it to *B.* for life, with remainders over. *A.*'s executor filed a bill against *B.* alone, for a conveyance of the property upon the trusts of the will, not, however, seeking to recover it as assets for the purposes of the executorship. Held, that the other *cestui que trusts* were necessary parties; and, *semble*, that such a suit might be maintained. *Josling* v. *Karr.* vol. 3, p. 494
2. A testator bequeathed a leasehold and his residuary estate to his executors, on trust for *A.* for life, and afterwards to pay certain legacies, and the residue to such of three persons, *D.*, *E.* and *F.*, as should be living at *A.*'s death. The executors permitted *A.* to retain possession of the leasehold during her life, and *D.*, *E.* and *F.* executed a deed (which was also executed by one of the executors) whereby they agreed to take as tenants in common: *A.* died. Held, that the executors had not *assented to the legacies*, either by permitting *A.* to retain possession of the leasehold, or by the execution of the deed, and that the executors could make a good title to the leasehold. *Attorney-General* v. *Potter.* vol. 5, p. 164
3. After an estate has been fully administered in this Court, the executor will not be permitted, without the leave of the Court, to prosecute an action to recover part of the testator's property from a party to the suit. *Oldfield* v. *Cobbett.* vol. 6, p. 515
4. An executor or administrator may not only pledge or mortgage the assets, but may also give to the mortgagee of leaseholds a power to sell and give valid receipts for the purchase-money. *Russell* v. *Plaice.* vol. 18, p. 21
5. A testatrix by her will appointed *A.* and *B.* executors and trustees thereof. By a codicil, she revoked the appointment of *A.* as executor and appointed *C.* executor, and gave to *C.* "all the powers and authorities to enable him to carry out the trusts of her will as were given by the will to *A.*" The testatrix thereby also declared her intention to be that the codicil should only "affect the appointment of *A.* as executor of her will." Held, that *B.* and *C.* were executors and *A.*, *B.* and *C.* trustees of the will. *Worley* v. *Worley.* vol. 18, p. 58
6. The personal representatives are the proper parties to sue to recover the assets, and parties interested in the estate will not be allowed to sue for that purpose, unless it be satisfactorily shewn that assets exist which might be recovered, and which, but for such suit, would probably be lost to the estate. *Stainton* v. *The Carron Company and Others.* vol. 18, p. 146
7. *Semble*, that a power of selection given to the original executors ceased upon their death. *Forbes* v. *Forbes.* vol. 18, p. 552
8. Upon assenting to a specific bequest given to them in trust, executors forthwith become trustees. *Dix* v. *Burford.* vol. 19, p. 409
9. A testator died in 1829; part of his assets consisted of a promissory note for 100*l.* of five persons. All interest on it was paid down to 1837, but by whom it did not appear. In 1837, the executor took the note of one of the five for the 100*l.*, and interest was paid until 1842. Subsequently nothing was done, and the debt became barred by the statute. Held, that the taking the second note was equivalent to payment of the first, and the

executor was charged with the 100*l.* *Sparkes* v. *Restal.* vol. 22, p. 587

10. One of several executors may settle an account with a person accountable to the estate, and in the absence of fraud the settlement will be binding on the others, though dissenting. *Smith* v. *Everett.* vol. 27, p. 446

11. The Plaintiffs, who were nominated executors in a Scotch will, obtained *ex parte*, in *Scotland*, a confirmation of the nomination, and afterwards procured, as of course, the seal of the Probate Court in *England* thereto. They then sued some debtors of the testator in this Court. Held, that the pendency of proceedings in *Scotland* for a reduction of the confirmation was no defence, and the Defendants were ordered to pay to the Plaintiffs the amount due to the testator's estate. *Cumming* v. *Fraser.* vol. 28, p. 614.

12. An executor, under a *bonâ fide* belief, that on the true construction of the will they were entitled thereto, sold out stock, retained one-third, and paid two-thirds to the co-executors. It having been declared in the suit that the next of kin were entitled to this fund, and that the executor was bound to restore it. Held, that he was only liable to pay interest on the one-third retained by himself. *Saltmarsh* v. *Barrett.* (No. 2.) vol. 31, p. 349

13. An executor being surety for his testator, paid the debt after the testator's death. Held, that he had a right to retain his debt in preference to the other creditors of equal degree. *Boyd* v. *Brooks.* vol. 34, p. 7

EXECUTOR (BENEFICIAL INTEREST).

[*See* EXECUTOR (LEGACY TO).]

1. A testator appointed *A.* and *B.* his executors, and he gave them all his personal estate, "that is to say, for you to pay all as follows." He then gave several legacies, and afterwards said, "I wish all this to be paid in six months after my death." Held, under the 1 *Will.* 4, c. 40, that the executors did not take the unexhausted residue beneficially, but in trust for the next of kin. *Love* v. *Gaze.* vol. 8, p. 472

2. Parol evidence is now, since 1 *Will.* 4, c. 40, inadmissible to shew that the testator intended his executors to take the residue beneficially. *Ibid.*

3. Where a bequest is made by *A.* to the executors of *B.*, such executors hold it in trust, and to be administered as part of *B.*'s assets. The persons who take it beneficially take as *cestuis que trust*, and and not as *personæ designatæ*, and it may belong either to the creditors, or the pecuniary or residuary legatee or next of kin of *B.*, according to the circumstances. *Long* v. *Watkinson.* vol. 17, p. 471

4. Under the old law, prior to the 1 *Will.* 4, c. 40, the gift of a legacy to the wife of the executor does not prevent his taking the undisposed of residue beneficially. *Fryer* v. *Bouquet.* vol. 21, p. 33

5. A testatrix gave "to her executors, *A.* and *B.*," her residuary estate. By a codicil she appointed *C.* executor, "as if he had been named executor and trustee in the will." Held, that *C.* took no share in the residue. *Hillersdon* v. *Grove.* vol. 21, p. 518

6. A testator, by his will, said:—"I make *H. C. J.* my whole and sole executor of all the various properties I may be in possession of at my death: *M. C.* not to be forgotten, if she holds the same position at my decease." Held, that under the 1 *Will.* 4, c. 40, the executor was a trustee of the residue for the next of kin. *Juler* v. *Juler.* vol. 29, p. 34

7. A testator gave legacies of nineteen guineas to each of his executors, and he bequeathed his residue to them "absolutely," charged with certain legacies. He also authorized them to deduct their costs, charges and expenses out of any part of his estate. Held, that the executors were trustees of the residue for the next of kin. *Saltmarsh* v. *Barrett.* vol. 29, p. 474

EXECUTOR (EXPENSES).

[*See* TRUSTEE PROFITING BY TRUST.]

1. An executor, upon transferring stock to a legatee, paid one-sixteenth per cent. to a stock broker for identifying him at the bank. He was allowed the payment in passing his accounts. *Jones* v. *Powell.* vol. 6, p. 488

2. A planter in *India* obtained advances from his agents, who, by custom, were entitled to a commission on their advances, and on the produce of the sales of the crop. The planter died, and his executors sold the factory, and got in the crop, and remitted them to the agents, who sold the latter, and accounted to the executors for the balance, after deducting the amount due to them. Held, that the executors were entitled to five per cent. (*Indian* commission) on the gross proceeds of the factory and crop. *Mathews* v. *Bagshaw.* vol. 14, p. 123

3. A testator declared trusts relating to his real and personal estate, and gave his personal estate to trustees, in trust to set apart and invest a sufficient fund to pay his debts, legacies, funeral expenses, expenses of proving his will "*and the execution of the trusts thereof.*" Held, that the "expenses in the execution of the trusts of the will" were limited to those properly payable by the executors, in their character of executors alone, and

therefore that the costs of executing the trusts of the various real estates fell on the *cestuis que trusts*. *Lord Brougham* v. *Lord William Poulett*. vol. 19, p. 119

4. An executor will not be allowed the charges of his solicitor for doing things which the executor ought strictly to have done himself. *Harbin* v. *Darby*. (No. 1.) vol. 28, p. 325

5. A testator died in *August*, 1861, and his executors remitted to their solicitor 80*l*. to obtain probate and 25*l*. to pay legacy duty. The solicitor became bankrupt in *November*, 1861, and the money was lost. The Court allowed the executors the 80*l*., but not the 25*l*., the latter advance being premature, the legacies not having yet (1863) been paid. *Castle* v. *Warland*. vol. 32, p. 660

EXECUTOR (INDEMNITY).

[*See* PAYMENT (OF DEBTS AND LEGACIES).]

1. Executors, whose testator died in 1827, advertised for persons having claims or demands on the estate of their testator, and having provided for all that appeared, they, in 1829, distributed the estate amongst the legatees and took from them an indemnity. A demand previously unknown both to the claimant and the executors was made against the estate in 1836, and a bill filed to enforce it. Held, that if the claim were valid, the executors were still personally liable to the Plaintiff. *Hill* v. *Gomme*. vol. 1, p. 540

2. A testator held long leaseholds, some as original lessee and others as assignee. They were sold in the suit. Held, that the executors were entitled to be indemnified against the eventual breaches of the covenants, either by a retainer in Court of a part of the assets, or by a security of the legatees to refund. *Dobson* v. *Carpenter*. vol. 12, p. 370

3. A reference was in such case made to the Master to ascertain what liabilities the estate might be subject to, in respect of the covenants, and what amount ought to be set apart, with liberty to the legatees to propose a proper security. *Ibid.*

4. An executor fairly stating the facts, and paying over the assets under the direction of the Court, in an administration suit, is fully indemnified against all existing or contingent demands on the estate. *Waller* v. *Barrett*. vol. 24, p. 413

5. Principles on which the Court acts in giving an indemnity to executors against the outstanding leasehold covenants of their testators. *Ibid.*

6. Executors held, under the circumstances, entitled to no further indemnity against the leasehold covenants of the testator than the recognizance of the parties beneficially entitled to his estate. *Waller* v. *Barrett*. vol. 24, p. 413

7. A fund set apart in 1857 to answer liabilities of an intestate's estate in respect of leasehold covenants was distributed in 1865 amongst the next of kin, it appearing that all the leases had either been sold or surrendered, and the statute 22 & 23 *Vict*. c. 35, s. 27, having passed in the meantime. *Reilly* v. *Reilly*. vol. 34, p. 406

8. When, after a decree directing a legal personal representative to admit assets or account, he pays debts, he will be allowed them, though the estate should prove deficient. But when such a payment is made after a decree for the administration of the estate the rule is otherwise. *George* v. *George*. vol. 35, p. 350

EXECUTOR (LEGACY TO).

[*See* EXECUTOR (BENEFICIAL INTEREST).]

1. A testator appointed *A. B.* and *C. D.* trustees and executors of his will. By a codicil, he bequeathed to each of the trustees named in his will the sum of 5,000*l*., on condition that he accepted the trusts thereof. By a subsequent codicil, he revoked all that part of his will which related to *C. D.*, and requested *E. F.* "to undertake and fulfil the same purposes and intentions, and on the same conditions, for the effecting of which he had appointed the said *C. D.* By a subsequent codicil he revoked the appointment of *A. B.* and *C. D.* as trustees and executors, and all legacies to them, and he nominated *E. F.* executor and trustee thereof. Held, that *B. F.* was entitled to the legacy of 5,000*l*. *Radburn* v. *Jervis*. vol. 3, p. 450

2. A testator appointed *A.* and *B.* executors, and after giving certain legacies he gave *A.* 500*l*. and *B.* 500*l*. The executors renounced. Held, that they were not entitled to their legacies. *Calvert* v. *Lebbon*. vol. 4, p. 222

3. An aged executor, who was incapable by bodily and mental infirmity of proving the will. Held, not entitled to a legacy given by the testator's will to him as executor. *Hanbury* v. *Spooner*. vol. 5, p. 630

4. A bequest of an annuity to an executor for his trouble in the conduct and management of the testator's affairs, has no priority over other legacies, in case of a deficiency, and it must abate. *Duncan* v. *Watts*. vol. 16, p. 204

5. One of two executors, to whom a legacy was bequeathed, renounced in 1853, but afterwards, in 1859, he retracted and proved the will. An administration suit was subsequently instituted against him as executor, and it appearing that the

estate had not been administered when the executor proved, he was held entitled to his legacy, but with interest only from the time of proving. *Augermann* v. *Ford.* vol. 29, p. 349

6. Bequest to an executor for his trouble. Held, not payable, he having been prevented by severe illness from proving the will and from ever acting. *Re Hawkin's Trust.* vol. 33, p. 570

EXECUTORY TRUST.

1. Trusts in a will held not executory so as to alter the construction as arising on an executed trust. *Franks* v. *Price.* vol. 3, p. 182

2. By marriage articles, a husband covenanted, in consideration of his wife's portion, to settle an estate to his own use, and after his decease to the use *of his heirs on the body of his intended wife*, and for want of such issue *to his own right heirs for ever*. The articles did not express any further intention of providing for the children of the marriage, and made a provision for the intended wife *in lieu of dower*. No settlement was executed; and the husband mortgaged the estate, and at the same time delivered the articles to the mortgagee. Held, on his death, that under the articles, he was entitled to a life estate only, and that the mortgagee took with notice, and could not therefore hold as against the issue of the marriage. *Davies* v. *Davies.* vol. 4, p. 54

3. A testator, by his will, gave real and personal property to his daughter *A.* absolutely; but by a codicil made subsequent to her marriage, he directed that "it should be settled to the exclusion of her present or any future husband, that the same might belong to her during her life, and be secured for the benefit of her children equally after her death, so that the issue of any such child dying in her lifetime might take his or her parent's share;" and, in default of such children or other issue, over. Held, that the property must be settled in trust for *A.* for life, to her separate use, without power of anticipation; and, after her decease, upon trust for such of her children as should survive her, and for the issue living at her death of such of her children as should not survive her, equally, as tenants in common, the issue to take *per stirpes*, but *inter se* equally as tenants in common. *Turner* v. *Sargent.* vol. 17, p. 515

4. That there should be limitations in the nature of cross-remainders in favour of such of the children and issue as should survive *A.* in respect of the share of any child dying in her lifetime without leaving issue, and in respect of the share of any issue of any child similarly dying. *Turner* v. *Sargent.* vol. 17, p. 515

5. That the realty should be settled as realty; and as the testator, by simply directing a settlement, must have intended, with powers of leasing and sale and exchange, and with a receipt clause; and that the settlement should contain provisions for maintenance, education and advancement, and power to appoint new trustees. *Ibid.*

6. To save expense, the Court declared the construction of executory marriage articles, instead of directing a settlement to be executed in conformity therewith. *Byam* v. *Byam.* vol. 19, p. 58

7. By the 2nd clause of marriage articles, it was agreed, that a sum should be settled on the wife (not stating how), and the husband renounced his marital right over it during the coverture. The 4th clause provided, that in case of her death leaving issue, it should belong to the husband and children successively; the 5th gave her a power of appointment, if she died without issue; and the 6th provided, that the income should "*in all cases*," belong to the husband during his life. There was no express life estate given to the wife. Held, first, that the 6th clause being repugnant with the 2nd clause, the husband's life interest was postponed until the death of his wife; and, secondly, that the wife, by implication, took an immediate life estate to her separate use. *Ibid.*

7*a*. A father directed a fund, given to his daughter, to be settled "upon her and her issue," so that "the same might not be liable or subject to the debts, control or engagements of any husband" whom she might happen to marry during her lifetime. Held, that the settlement ought to give the daughter a power of appointment by will in default of issue. *Stanley* v. *Jackman.* vol. 23, p. 450

8. Form of settlement in such a case. *Ibid.*

9. A testator empowered his trustees to purchase freeholds "to the amount of 1,500*l.* of his personal estate, for the use of *A.* during life, and then divided among his issue, if any." Held, that this was executory, and that *A.* took for life, with remainder to his children as tenants in common in tail, with cross-remainders between them in tail with an ultimate reversion in fee to *A.* *Hadwen* v. *Hadwen.* vol. 23, p. 551

10. A testator devised to trustees, to the use of eight persons successively for life, and afterwards in trust to convey to all the sons and daughters of the eight who should be then living, and the heirs of their bodies "respectively, in a due course of entail;" and he empowered his

sister to cut down the estates of children "thereafter born" of the eight to life estates. The Plaintiff was a child of one of the eight born at the date of the will. Held, that though the trust was executory, she was tenant in tail, and not tenant for life. *Randall* v. *Daniel*.
vol. 24, p. 193

11. A testator devised his estate to his nephews for life, with remainder to their first and other sons in tail, successively, and he required the eldest nephew, on becoming seised of another estate (*Lincolnshire*), to convey it unto "the next in age of his said nephews and his heirs male, under the like limitations and restrictions as were contained in the will as to the testator's own estate." After the testator's death, his eldest nephew being seised of the *Lincolnshire* estate, but (as was held) under no liability to settle it, conveyed it to trustees, upon the uses upon which it "should be conveyed, in compliance with and in conformity to the proviso" contained in the testator's will, "and the terms, spirit, true intent and meaning of the same." Held, that the deed must be construed as if a settlement had been executed under the Court, and that under the deed, the second nephew took an estate for life only. *Walmesley* v. *Gerard*. vol. 29, p. 321

EXHIBITS.

[*See* AFFIDAVITS.]

A party proved exhibits by two witnesses. Held, that he was not on that account to be charged with the costs; for in equity such a proceeding may be necessary. *Burchell* v. *Giles*.
vol. 11, p. 34

EXONERATION.

[*See* MORTGAGE (EXONERATION), ORDER OF ASSETS.]

1. The testator mortgaged two estates by demise: he specifically devised one of them (the *Blunsden*), while the other (the *Marston*) descended on his heir; and he devised all his estates (except the *Blunsden* and *Marston*), and bequeathed his personal estate to his heir, subject to the payment of his debts. The heir afterwards covenanted to exonerate the *Blunsden* estate from the mortgage, and he subsequently joined in a deed, whereby, with the concurrence of the mortgagee, who was satisfied that the *Marston* estate was a sufficient security, the term, as to the *Marston* estate alone, was transferred to trustees to secure the mortgage money. The heir by his will devised the *Marston* estate specifically, upon certain trusts, and he gave all his other real and personal estate to his eldest son, "subject to the payment of his debts and the fulfilment of all his contracts and obligations." Held, that the devisees of the *Marston* estate took it subject to the mortgage, and were not entitled to have it exonerated out of the personal estate of the second testator. *The Earl of Ilchester* v. *The Earl of Carnarvon*.
vol. 1, p. 209

2. Personalty exonerated from payment of mortgage debt, by a devise of the mortgaged estate to *A.*, "he paying the mortgage thereon." *Lockhart* v. *Hardy*.
vol. 9, p. 379

3. A testator devised all his real property to trustees, upon trust, in the first place, subject to the payment of his funeral expenses, of any debts, and of the annuities and pecuniary legacies thereinafter bequeathed, for his son for life, &c. &c. And, after giving certain annuities and legacies, and after giving his furniture, wines, and stores to his wife for life, and an annuity of 440*l.*, out of his real and personal estate, he bequeathed to his son "all his personal property, after his mother's decease, except some plate." Held, that the personal estate was not exonerated from the payment of the debts, &c. *Ouseley* v. *Anstruther*.
vol. 10, p. 453

4. A testator had mortgaged his estate *S.* By his will, he directed his debts, other than the mortgage, to be paid out of a specified part of his personal estate; he recited his intention of forthwith paying off a great part of the mortgage debt, and he directed that "the balance" of such mortgage should be paid by sale of timber on the *S.* estate. He made no bequest of his general personal estate. Held, that the mortgage was payable first out of the general personal estate; secondly, out of the descended real estate; and, thirdly, out of the timber money. *Lomax* v. *Lomax*. vol. 12, p. 285

5. A testator gave several life annuities, one of which was (expressed in the alternative), either 10*l.* a year, or 5*l.* and a tenement (part of the *N.* estate), and he charged them all on the *N.* estate. Held, that all the annuities were charged exclusively on that estate. *Ibid.*

6. A testator charged his freehold hereditaments and money in the funds with an annuity due from him on bond to *A.*, and, subject to the payment of the said annuity, he devised and bequeathed the same to *B.* He then gave the residue of his real and personal estate, "subject as to his personal estate to the payment of his debts and legacies," to *C.* Held, that the general personal estate was not

exonerated from the payment of this annuity. *Quennell* v. *Turner*.
vol. 13, p. 240

7. Devise to *A.*, *B.* and *C.* of real and personal estate, upon trust, to pay debts and then the legacies bequeathed by any codicil, and the residue to *A.*, *B.* and *C.*, her executors. By a codicil the testatrix devised her *Fradswell* estate to her sister for life, and, after her death, to be sold for the payment of legacies; and she then bequeathed legacies to a considerable amount. Held, that the personal estate was not exonerated, so as to make the *Fradswell* estate primarily applicable to the payment of the legacies. *Whieldon* v. *Spode*. vol. 15, p. 537

8. A testator, by a testamentary paper not admitted to probate, but held effectual as regarded his real estate, directed his trustees, to whom he had devised his real estate, in the first place, out of the rents and profits of his said estate, to pay all his just debts, funeral and testamentary expenses, and all costs, &c. Held, that this not only charged the real, but exonerated the personal estate. *Plenty* v. *West*. vol. 16, p. 173

9. The testator bequeathed certain pecuniary legacies, and gave his leasehold estates to his executors to sell and apply the proceeds in part payment of the legacies. Held, that the leaseholds were to be applied, as far as they would extend, in payment of the legacies, and that the deficiency was to be paid out of the personal estate. *Bunting* v. *Marriott*.
vol. 19, p. 163

10. A testator gave his real and personal estate to trustees, and directed them to pay the income to his wife for life, and after her death, to sell his real estate, "and out of the money to arise therefrom, in the first place," to pay to *A.*, *B.* and *C.* the following sums (specifying them), and upon trust to invest "the remainder of the money to arise from such sale," and stand possessed thereof and of his personal estate, in trust to pay certain annuities, and he gave the residue to the Plaintiff. Held, by the Master of the Rolls, that the bequests to *A.*, *B.* and *C.* were payable solely out of the real estate, but the decree was varied by the Lords Justices. *Fream* v. *Dowling*.
vol. 20, p. 624

11. Two estates, *A.* and *B.*, were subject to the same mortgage. The owner, on the marriage of his son, settled *A.* in strict settlement, and the trustees were empowered "from time to time, when and as occasion should require," to sell any part of *A.*, and pay off the mortgage, so as to exonerate *B.* The owner afterwards mortgaged *B.* to the Plaintiff, but without any express mention of the exoneration clause. The Plaintiff having filed a bill to enforce the exoneration clause, without making the trustees of the settlement parties, it was dismissed, with costs. *Rooke* v. *Lord Kensington*.
vol. 21, p. 470

12. The time for exercising the trust for sale would seem to be, when the *B.* estate would be made liable to pay the charge on the *A.* estate. *Ibid.*

13. A testator devised an estate (*X.*) to trustees, upon trust to raise (in aid of his personal estate) sufficient to satisfy his debts and the mortgages on his estate (*Y.*), which he devised to his daughters; and he declared that the incumbrances on *Y.* should be payable out of *X.* "in exoneration of" *Y.* On the testator's death, the real estate (*Z.*) descended to his heir at law. Held, that as between *X.* and *Z.*, the former was primarily liable to pay the mortgage and other debts. *Phillips* v. *Parry*.
vol. 22, p. 279

14. A testator bequeathed his personal estate to his wife, "discharged from the payment of his debts." He then devised his real estate in *Herefordshire* in trust to sell and pay "all his just debts, funeral and testamentary expenses" in exoneration of his personal estate, and he devised his real estates in *Norfolk*, without any expressed trust, for payment of his debts. The produce of the *Herefordshire* estates being insufficient to pay the debts. Held, that the *Norfolk* estates were next liable to pay them in exoneration of the personal estate. *Young* v. *Young*.
vol. 26, p. 522

15. A testator bequeathed certain personal property to his wife specifically, and he devised his real and personal property to trustees for sale, and out of the produce, in the first place, to pay his debts, funeral expenses and legacies; and, in the next place, to invest the surplus; and, subject to the trusts aforesaid, to pay the income to his wife for life, with remainder over. By a codicil, he gave all his personal estate to his wife. Held, that the widow was entitled to the personal estate exonerated from the debts and legacies, and that they were primarily charged on the real estate. *Lance* v. *Aglionby*.
vol. 27, p. 65

16. Personal estate held exonerated from the payment of the legacies and annuities bequeathed by a will. *Ion* v. *Ashton*.
vol. 28, p. 379

17. A testator "bequeathed" legacies, and "devised and bequeathed annuities or rent-charges," and he charged them on a real estate, and, subject thereto, he devised that real estate to *A.* He dealt similarly with another real estate. And he bequeathed his personal estate in trust to pay his debts and certain specified expenses, and to pay the rest to a

charity. Held, that the annuities and legacies were charged on the real estate, and that the personal estate was exonerated. *Ion* v. *Ashton.* vol. 28, p. 379

18. Specific bequest of personalty to trustees for certain persons, "subject to the provisions hereinafter made." Then followed a proviso, that these trust funds "should be liable to and applicable," by the trustees, to the payment of the debts, &c. There was a residuary bequest to other persons. Held, that the specific legacy was primarily liable to the payment of the debts, &c. *Webb* v. *De Beauvoisin.* vol. 31, p. 573
19. A testator directed, that after payment of his debts, all his money should be divided between his three children. All his other personal property he devised to his eldest son. Held, that the debts were primarily payable out of the money specifically bequeathed. *Vernon* v. *Earl Manvers.* (No. 2.) vol. 31, p. 623
20. Personal estate held exonerated from the payment of "funeral and testamentary expenses and debts." *Gilbertson* v. *Gilbertson.* vol. 34, p. 354
21. A testator bequeathed his leasehold and personal property (except plate) to his wife absolutely, and he devised his real estate in trust to sell, and out of the produce to pay "his funeral and testamentary expenses and debts," and to invest "the residue" and pay the income to his wife for life, with remainders over. Held, that the "funeral and testamentary expenses and debts" were primarily payable out of the produce of the real estate. *Ibid.*

EXPECTANCY.

Real and personal property were given to the eldest son of *A.* who should be living at his decease and attain twenty-one. The income, after twenty-one years' accumulation, was given "to the person for the time being entitled in immediate expectancy" to the property. At the end of twenty-one years *A.* was living and had children, who were all minors. Held, that the eldest minor was entitled to the income until *A.*'s death. *Westcar* v. *Westcar.* vol. 21, p. 328

EXTRINSIC EVIDENCE.

[*See* PAROL EVIDENCE.]

FAMILY.

[*See* CHILDREN.]

FARMING STOCK.

[*See* DESCRIPTION OF GIFT.]

FATHER AND CHILD.

[*See* PURCHASE BY FATHER IN NAME OF SON, UNDUE INFLUENCE.]

FEES.

[*See* COSTS, DEBT.]

1. Commissioners for the examination of witnesses, restrained from prosecuting an action at law for the recovery of their fees, and a reference made to the Master to ascertain what was due to them. *Ambrose* v. *Dunmow Union.* vol. 8, p. 43
2. The regulation of the 5th *November*, 1840 (*Ordines Can.* 157), is not a general order of the Court, giving the clerks a legal demand for the fees therein mentioned, but a mere intimation of opinion of the equity judges, that they may be properly allowed in taxation. *Ex parte Cotton.* vol. 9, p. 107
3. A physician attended the testator for many years without having obtained any remuneration. He stated "that the testator had promised to pay him for his services, or leave him an equivalent." He did neither. Held, that the physician had no claim against the estate, and a payment made to him by the executor was disallowed. *Shallcross* v. *Wright.* vol. 12, p. 558
4. Commissioners for the examination of witnesses have a lien on the depositions for their fees, and will not be compelled to return them, until they have received payment. *Peters* v. *Beer.* vol. 14, p. 101
5. Attendance by a medical man on the deceased, held, under the circumstances, to have been gratuitous, and his demand, as a debt against the assets, was rejected. *Packman* v. *Vivian.* vol. 24, p. 290

FELLOWSHIP.

1. An assignment of the emoluments of a fellow of a College in the University is valid in equity, and effect will be given to a security thereon out of the dividends apportioned to such a fellow from time to time in respect of his fellowship. *Feistel* v. *King's College, Cambridge.* vol. 10, p. 491
2. Motion by incumbrancer on a fellowship for a receiver and injunction, refused by the V.-C. E. *Berkely* v. *King's College, Cambridge.* vol. 10, p. 602

FELONY.

[*See* ESCHEAT.]

The civil remedies for suing the felon which belong to the person whose property has been feloniously taken are suspended, after the discovery of the commission of the offence, until the conviction of the felon, in order that the dignity of the law may be vindicated by the prosecution and conviction of the felon. But it is indifferent by whom the felon is prosecuted. *Chowne* v. *Baylis.*
vol. 31, p. 351

FILING BILL, &c.

[*See* IRREGULARITY, RECORD AND WRIT CLERKS.]

1. An answer, part of which is indorsed on the outside skin of parchment, not filed by the Record and Writ Clerks. Practice in such a case. *McKeone* v. *Seaber.*
vol. 18, p. 411
2. The Plaintiff relieved from the necessity of filing a printed bill; in an injunction case, where the matters of the suit had been arranged under an order made prior to the expiration of fourteen days from filing the written bill. *Garland* v. *Riordan.*
vol. 33, p. 448

FIERI FACIAS.

[*See* ELEGIT.]

1. A party to whom money or costs are ordered to be paid may still issue a *fi. fa.* or *elegit.* *Streeten* v. *Whitmore.*
vol. 5, p. 228
2. Mode of enforcing the sheriff's return to a writ of *fi. fa.* issuing out of Chancery. *Evans* v. *Davies.* vol. 7, p. 81

FINE.

[*See* COPYHOLD, MARRIED WOMAN'S CONVEYANCE.]

1. Observations as to the legal and equitable right of parties to bar known existing adverse claims by fine and non-claim. *Langley* v. *Fisher.* vol. 9, p. 90
2. If, in levying a fine, a direct fraud is practised, this Court has undoubted jurisdiction to give relief; but the mere fact that a party levying a fine has good reason to believe, that if he did not do so, an adverse claim might or would be established against him, has never been considered as sufficient evidence of a gross fraud, to induce this Court to grant relief. *Ibid.*
3. An estate was settled on husband and wife for life, with a limitation to their issue, and, in default, a power of appointment was given to the wife. There was one child only of the marriage, who died an infant. The wife survived her husband, and appointed the estate to *G. D. F.*, who was the releasee, to uses, and had possession of the settlement. *G. D. F.*, shortly after the wife's death, made a feoffment, and levied a fine with proclamations. After the expiration of the five years, the heir of the child claimed the estate, insisting that, under the terms of the settlement, the child took the estate in fee, and that the power of appointment had never arisen. He filed a bill against *G. D. F.* to avoid the fine, alleging that it had been levied with full knowledge of the Plaintiff's rights, and, with a fraudulent view to bar them. Held, that the act of *G. D. F.* did not constitute a fraud, that *G. D. F.* stood in no fiduciary relation towards the Plaintiff, and the bill was dismissed with costs. *Langley* v. *Fisher.* vol. 9, p. 90

FISHERY.

Held, upon the construction of the "Public Health Act, 1848," that a Local Board of Health were not authorised, without consent, in making a sewer into a river where the Plaintiffs were owners of a several fishery. *Oldaker* v. *Hunt.*
vol. 19, p. 485

FIXTURES.

[*See* MACHINERY.]

In 1843, tenants in possession agreed to take a lease of a mill, with the gas-house and apparatus, as the same were then occupied by them, for twenty-one years from 1841. In settling the lease in Chambers, they insisted on having a schedule of landlord's fixtures, on the ground of their having placed tenant's fixtures on the premises, and they sought to exclude the gas-works set up by them. It did not appear when they were placed and set up. The Court refused to insert the schedule or the exception. *Sharp* v. *Milligan.* vol. 23, p. 419

FOLLOWING ASSETS AND TRUST MONEYS.

1. As to contracts merely personal, it is a general rule, that questions relating to the validity and to the interpretation of a contract are to be governed by the law of the country where the contract was made: and if a remedy for non-performance of a contract is sought in another country, the mode of suing and the time

within which the action must be brought are to be governed by the law of the country in which the action is brought. *Cooper* v. *The Earl of Waldegrave*.
vol. 2, p. 282

2. A corporation voluntarily founded an hospital under the 39 *Eliz.* c. 5, and procured real estates to be conveyed to it, which, however, were subsequently managed by the founders. The founders afterwards sold the hospital property, and conveyed it for valuable consideration to the purchasers, giving them an indemnity; and they applied the purchase-money, together with other moneys of their own, in the purchase of the *W.* estate. The founders accounted to the hospital yearly for more than the rental of the estate sold. Held, that the hospital was entitled to such a proportion of the *W.* estate, as the purchase-money of the charity estate contributed towards the purchase of the *W.* estate. *Attorney-General* v. *The Corporation of Newcastle*.
vol. 5, p. 307

3. When trust funds are invested on an improper security, the parties interested have a lien on the securities into which they are traced. *Mant* v. *Leith*.
vol. 15, p. 524.

4. The produce of a specific legacy misapplied by *A.*, an administrator, being traced into *post obit* securities given by *B.* to *C.*, the Court held, that the *cestui que trust* was entitled to a charge on the securities. *Harford* v. *Lloyd*.
vol. 20, p. 310

5. A specific legacy of 6,000*l.* Consols, bequeathed to the Plaintiffs, was unnecessarily and improperly sold out by the administrator (*A.*), with the aid of *B.*, and the produce carried partly to the banking account of *A.*, and the remainder to that of *B.* A series of shuffling of cheques and transfer of moneys took place, but 2,908*l.* was traced to *B.* About this time *B.* laid out monies in the purchase of a *post obit* security, and though the trust moneys could not be distinctly traced into the securities, yet the Court held, from the suspicious character of the transactions, that such was the just inference, so far as to throw on the other side the *onus* of disproving it, and this not having been done, the Court held, that the Plaintiffs had a charge on the securities for the 2,908*l.* and interest. *Ibid.*

6. The partnership between *A.* and *B.* was dissolved and *A.* retired. *A.*, by deed, agreed to execute an assignment to *B.* of the partnership assets (part of which consisted of a policy of which the partners were assignees), and *B.* was to covenant to pay the debts and indemnify *A.* against them. No further deed was executed. *A.* died, and *B.* afterwards assigned the policy to a purchaser who had notice of the deed. *A.*'s executors were afterwards compelled to pay partnership debts which ought to have been discharged by *B.* The policy being adversely claimed by the purchaser and by *A.*'s executors. Held, that though *A.* and his executors were entitled to pursue any portion of the partnership property in the hands of *B.*, and have it applied in payment of the partnership debts, yet that they had no such right as against the purchaser from *B.* though with notice, for he was not bound to see to the application of the purchase-money. *In re Langmead's Trust*.
vol. 20, p. 20

FORECLOSURE.

[*See* MORTGAGE (FORECLOSURE).]

FOREIGN LAW.

[*See* JURISDICTION (FOREIGN COUNTRY), DOMICILE.]

1. Question as to rights of parties decided on the opinion of Scotch advocates. *Williams* v. *Williams*.
vol. 3, p. 547

2. A simple allegation that a foreign instrument depending on foreign law is null and void, is too vague. *Duke of Brunswick* v. *King of Hanover*.
vol. 6, p. 1

3. English subjects, on their marriage, may stipulate that their marriage rights shall be regulated by the law of a foreign country, and this Court will enforce such a contract. *Este* v. *Smyth*.
vol. 8, p. 112

4. As to the mode in which a foreign law ought to be proved in an English court of justice, and observations on the difficulties in adjudicating thereon. *Earl Nelson* v. *Lord Bridport*.
vol. 8, p. 527

5. It is a rule of English law, that no knowledge of foreign law is to be imputed to an English judge sitting in a court of mere English jurisdiction.

The law of a foreign country is to be proved as a matter of fact, by the testimony of witnesses; the judge is not supposed to know all the authorities applicable to the case, or whether any older laws or authorities, which may be cited, have been repealed or altered by subsequent laws or authorities, or what are the rules of construction properly applicable to the authorities when ascertained.

As cases arise, in which the rights of parties litigating in English Courts cannot be determined, without ascertaining, to some extent, what is the foreign law applicable in such cases, foreign law and

its application, like any other results of knowledge and experience in matters of which no knowledge is imputed to a judge, must be proved, as facts are proved, by appropriate evidence, *i.e.* by properly qualified witnesses, or by witnesses who can state, from their own knowledge and experience, gained by study and practice, not only what are the words in which the law is expressed, but also what is the proper interpretation of those words, and the legal meaning and effect of them as applied to the case in question.

There may be cases in which a judge may take upon himself to construe the words of a foreign law, and determine their application to the case in question, especially if there should be a variance or want of clearness in the testimony. *Semble.* *Earl Nelson* v. *Bridport.* vol. 8, p. 547

6. A condition attached to the devise of an estate in Sicily, contrary to the laws of Sicily, held inoperative. *Ibid.*
7. Doubts raised, whether a marriage between English subjects, at the British embassy in *Paris*, would be recognized as valid by the French tribunals, and whether an ante-nuptial settlement in the French form, followed by such a marriage only, would be held operative in *France*. *Este* v. *Smyth.* vol. 18, p. 112
8. Incompetency of the Courts in *France* to modify the legal conditions of marriage of English subjects there resident. *Hope* v. *Hope.* vol. 19, p. 239
9. Where it is sought to have funds belonging to a domiciled Scotch *feme covert* paid out of Court, and any Scotch settlement exists, the Court requires the testimony of a Scotch advocate to shew that it does not affect the fund. *In re Todd.* *Shand* v. *Kidd.* vol. 19, p. 582
10. An English gentleman married a French lady and became domiciled in *France*. Differences arose between them, and they entered into a contract, without the intervention of trustees, to put an end to them. It was in the French language, and was executed by one party in *France* and by the other in *England*, and was to be performed partly in *France* and partly in *England*. The wife filed a bill for specific performance against her husband, to which he demurred. The demurrer was overruled, on the ground that the application of the French law was not, upon the statements in the bill, excluded, and that the questions of international law were too difficult to be decided on demurrer. *Hope* v. *Hope.* vol. 22, p. 351
11. *A.*, residing in *Hanover*, consigned wheat to *B.*, residing in *London*, for sale. By the delay in selling, the charges exceeded the proceeds. *Semble*, that the English, and not the Hanoverian law, was applicable. *Reimers* v. *Druce.* vol. 23, p. 145
12. Form of reference to the Supreme Court at *Calcutta* of questions of Hindoo law under the 22 & 23 *Vict.* c. 63. *Logia* v. *The Princess Victoria Gouramma of Coorg.* vol. 30, p. 632
13. A man went through the ceremony of marriage abroad with his deceased wife's niece. The marriage was void according to the English law, but valid according to the foreign law. He, on that occasion, executed a marriage settlement in favour of his intended wife, and also of the children of his former and of his intended marriage, as a class. Held, that the whole was void. *Chapman* v. *Bradley.* vol. 33, p. 61
14. A contract between domiciled Englishmen, relating to real estate in a foreign country, is to be determined by the *lex loci*, but a contract between an Englishman domiciled and resident in *England* and an Englishman resident in a foreign country, but not having acquired a foreign domicil, must be governed and construed by the rules of English law. *Cood* v. *Cood.* vol. 33, p. 314

FORFEITURE.

[*See* CONDITION, FORFEITURE ON BANKRUPTCY, &c., FORFEITURE (RELIEF FROM), GIFT OVER, REPUGNANT CONDITION.]

1. An agreement was entered into by *A.* for the sale of an estate to *B.*, to be completed and the purchase-money paid on or before the expiration of five years, and in the meantime interest on the purchase-money was to be paid half-yearly by the purchaser; the vendor reserved a right of avoiding the contract in case the interest should be in arrear for twenty-one days. To enable *B.* to pay the interest then in arrear *C.* advanced a sum of money on mortgage of *B.*'s interest in the property, and the vendor afterwards verbally agreed with *C.* to extend the term for the payment of the half-yearly interest. The interest became afterwards in arrear in such a way that *A.* by the original agreement had a right to annul the contract, but he had no such right under the varied agreement: *A.* re-entered as for a forfeiture. The Court, on the application of *C.*, appointed a receiver over the property. *Dawson* v. *Yates.* vol. 1, p. 301
2. A testator bequeathed an annuity, to cease in case the legatee, if required, should not execute a release. A release was tendered, which *A.* refused to execute. It was not proved that the legatee knew the contents of the deed, or that

any explanation was offered to him; and it appeared to have contained an inaccurate recital. Held, that there was no forfeiture. *Williams* v. *Knipe*.
vol. 5, p. 273

3. Bequest in trust for *A.* for life, if he should not marry *Harriett B.* And after such forfeiture should have taken place, and after the decease of *A.*, in trust for the widow of *A.* (except as aforesaid) and *A.*'s children by any other woman than *Harriett B.* *A.* married *Harriett B.* Held, that *A.* was still entitled to the income. *W*—— v. *B*——.
vol. 11, p. 621

4. Construction of a clause of forfeiture of the interest of a husband, on his doing or attempting to do any act whereby the wife should be prevented executing a power, or the property be prevented devolving on her heirs. *Wade* v. *Hopkinson*.
vol. 19, p. 613

5. A clause of forfeiture in case of the devisee not making the mansion house "his usual and common place of abode and residence," is not void for uncertainty. *Wynne* v. *Fletcher*.
vol. 24, p. 430

6. Whether, under such a condition, upon a forfeiture happening, the person next in remainder is bound to enter and reside, or can waive the forfeiture without himself forfeiting his own estate, *quære*. *Ibid.*

7. A testator commenced building a column on his estate, which was only half finished at his death. By his will, he declared that if the devisee for life of his estates "should neglect to keep in complete repair the column then being erected," he should forfeit his estate. Held, that this implied no obligation on the executors to complete the column out of the testator's assets. *Jolliffe* v. *Twyford*.
vol. 26, p. 227

8. A testator gave a share of his estate to his nephew, but declared that if he should "make any claim or demand against his estate," it should lapse, and there was a gift over. Two years before the testator's death a dispute had arisen between him and his nephew as to some cottages. The testator distrained on the tenants and they replevied, and after the testator's death the nephew distrained, and it was determined in a consolidated action that the cottages belonged to the testator. Held, that there was no forfeiture, the proceedings of the nephew being defensive, and the proviso pointing to acts subsequent to the testator's death. *Warbrick* v. *Varley*. (No. 2.) vol. 30, p. 347

9. In 1852 *A. B.* voluntarily covenanted to pay an annuity to *C. D.* until she "should do any act whereby the same or any part thereof should be vested or become liable to be vested in any other person." She married in 1859, but it did not appear that the husband had, in any way, interfered with the annuity. Held, that by the marriage alone, she had not forfeited the annuity. *Bonfield* v. *Hassel*.
vol. 32, p. 217

FORFEITURE ON BANKRUPTCY, &c.

1. Property was settled on *J. R.* by his father, until he should take the benefit of the Insolvent Debtors' Act, and then the trustees were during his life to apply it in such manner and to such persons, *for the board, lodging and subsistence of J. R. and his family*, as the trustees should think proper; and after his decease upon trust for such persons as *J. R.* should appoint, and in default of appointment, in trust for his children. *J. R.* took the benefit of the Insolvent Debtors' Act; he had three children, but his wife was dead. Held, that his children, who were all infants, became entitled to three fourths, and the assignees to one fourth of the life interest of *J. R.* *Rippon* v. *Norton*. vol. 2, p. 63

2. Under a marriage settlement, trustees were, after the bankruptcy of the husband and the death of the wife, to pay the income "in such manner, for the maintenance and support or otherwise for the benefit of the husband and the issue," as they might think proper. Held, that the discretionary power of the trustees, as to the application of the income, was not taken away by the bankruptcy, so as to entitle the objects to take equally. An inquiry was directed as to what had been properly applied for the maintenance of the issue, and the assignees were declared entitled to the surplus. *Wallace* v. *Anderson*. vol. 16, p. 533

3. Funds were, in 1823, settled on a wife for life, with remainder to the husband "*until*" he should "make any composition with his creditors for the payment of his debts, although a commission of bankruptcy should not issue against him." In 1842 his principal creditors agreed to take a composition on their debts secured by bills. The wife died in 1852. Held, that the composition, though not with the whole of his creditors, and was made during the wife's life, and did not affect the trust property, nevertheless operated as a forfeiture of the husband's interests. *Sharp* v. *Cosserat*. vol. 20, p. 470

4. Under a clause of forfeiture, in case of a party attempting or agreeing to assign or anticipate a fund. Held, that a voluntary declaration of insolvency under which a fiat immediately issued, did not create a forfeiture. Secondly, that negotiations as to charging the fund, which resulted in nothing, did not create a forfeiture, and, that to constitute an "attempt" to anticipate, there must be some

act, which, but for the clause of forfeiture, would have the effect of anticipating the fund. *Graham* v. *Lee*. vol. 23, p. 388

5. Bequest to *A*. for life, and afterwards to her children living at her death, with a proviso, that if any child "should acquire a vested interest," and should encumber the same before his share should become payable, it should not be paid to him or his incumbrancer, but to others. A child mortgaged his share in the life of *A*., and survived her. Held, that the forfeiture took effect. *In re Payne*. vol. 25, p. 556

6. By a marriage settlement a rent-charge out of the husband's property was to become payable to his wife if he mortgaged it or became bankrupt. He mortgaged it first, and afterwards became bankrupt. Held, that a valid rent-charge having arisen upon the mortgage, it was not avoided by a subsequent bankruptcy. *Brooke* v. *Pearson*. vol. 27, p. 181

7. Under a limitation until bankruptcy, with a gift over in that event: Held, that a share which accrued after bankruptcy and certificate, by the death of one of a class without issue, went over upon the bankruptcy with the original share. *Dorsett* v. *Dorsett*. vol. 30, p. 256

8. *A. B.*'s life interest in a fund in *England* was liable to a forfeiture if *A. B.* "should alien, sell, assign, encumber or transfer, or in any manner dispose of or anticipate" it. *A. B.* took the benefit of the Insolvent Act in *New South Wales*, having presented a petition there, by which he surrendered his estate (omitting this life interest from the schedule). The judge accepted this surrender of his estate and placed it under sequestration in the hands of the Chief Commissioner of Insolvent Estates. Held, that *A. B.* had thereby forfeited his life interest. *Townsend* v. *Early*. (No. 2.) vol. 34, p. 23

9. A case of forfeiture is *strictissimi juris*, and the party alleging it must prove it at the hearing, and no inquiry will, as in ordinary cases, be directed in regard to a forfeiture. *Cox* v. *Bockett*. vol. 35, p. 48

9a. The Plaintiff's interest was subject to a condition of forfeiture by anticipating. He gave a power of attorney to receive the income and a charge to secure a debt. There being an arrear of income at the time, and it not being shewn that the debt exceeded the arrears: Held, that there was no forfeiture. *Ibid.*

10. Property was settled on *A. B.* until bankruptcy, &c., or until, by any act or default of *A. B.* or by any other ways, it should become vested in or the property of any other person. A creditor of *A. B.* obtained a judgment against him and a charge, under the 1 & 2 Vict. c. 110, s. 14, on the fund. Held, that *A. B.*'s interest had thereby determined. *Montefiore* v. *Behrens*. vol. 35, p. 95

11. A married woman became entitled to a legacy. Her husband settled it on her and her children, reserving to himself a life estate, determinable on his bankruptcy, &c. Held, that the limitation was valid. *Montefiore* v. *Behrens*. vol. 35, p. 95

12. The income of a fund was payable to a trader for life or until he should become insolvent. He executed a deed of inspectorship, reciting that he was unable to pay his debts in full. Held, that his interest in the fund had thereby determined. *Freeman* v. *Brown*. vol. 35, p. 17

FORFEITURE (RELIEF FROM).

[*See* PENALTY.]

A builder agreed to take some land on a building lease, and to erect houses within a specified period, the landowner making him certain advances. There was a clause of forfeiture in default of their being completed within the time. Relief against a forfeiture was refused to the builder, it appearing that the landowner had fully performed his part of the contract. *Croft* v. *Goldsmid*. vol. 24, p. 312

FORGERY.

Railway stock belonging to *A*. and *B*. stood in their joint names. *A*. having signed a transfer and forged *B*.'s name thereto, sold the stock to a purchaser, and the company, acting on the forged deed, transferred the stock to such purchaser. *A*. survived *B*. Held, on a bill by the personal representative of *B*., that the company were bound to replace the stock to the extent of *B*.'s interest therein. *Taylor* v. *The Midland Railway Company*. vol. 28, p. 287

FORMA PAUPERIS.

1. Party suing in *formâ pauperis*, and proving successful, declared entitled to ordinary costs. *Roberts* v. *Lloyd*. vol. 2, p. 376

2. A Defendant, who was the executor and residuary legatee, obtained an order to sue in *formâ pauperis*; having afterwards taken the benefit of the Insolvent Act, he was dispaupered, on the ground that he was then defending in his representative character only. *Oldfield* v. *Cobbett*. vol. 2, p. 444

3. Defendant dispaupered, with the costs of the application, on affidavits, which were not wholly contradicted by the Defendant, shewing that he was not in bad circumstances. *Romilly* v. *Grint*. vol. 2, p. 186

4. The Court cannot, under 1 *Will.* 4, c. 36, assign counsel or solicitors to pauper defendants on the application of the Plaintiff. *Garrod* v. *Holden.* vol. 4, p. 245

5. The Plaintiff, in a V.-C.'s suit, obtained as of course at the Rolls an order to sue in *formâ pauperis* upon the usual affidavit that he was not worth 5*l.*, the matters in question in the cause only excepted. A motion to dispauper on the ground that he was in possession of the property in question of considerable value, involves the merits, and ought to be made to the V.-C., and not to the M. R. *Robinson* v. *Milner.* vol. 5, p. 49

6. Plaintiff was confessedly entitled, under a codicil, to the interest of 800*l.* Consols. He claimed by the suit, and in opposition to that codicil, a greater intereet in the testator's estate. A motion to dispauper him was refused. *Allen* v. *M'Pherson.* vol. 5, p. 485

7. An officer having half pay amounting to 150*l.* a year (which is not alienable) will not be allowed to proceed in *formâ pauperis*, and that notwithstanding he has taken the benefit of the Insolvent Act. *Boddington* v. *Woodley.* vol. 5, p. 555

8. A Plaintiff claiming partly under the heirs of a *French* subject, and through an instrument of doubtful construction, obtained an order of course at the Rolls to sue in *formâ pauperis*, upon the simple allegation of his poverty. Held, that the order was irregular, on the ground of the suppression of the facts, which ought to have been presented for the consideration of the Court upon the application. *St. Victor* v. *Devereux.* vol. 6, p. 584

9. An administrator having been admitted at the Rolls to sue in *formâ pauperis*, the order was discharged by Lord *Hardwicke.* *Paradice* v. *Sheppard.* vol. 6, p. 586, n. (See *Bayly* v. *Bayly.* vol. 11, p. 256)

10. Pauper order discharged, the particular circumstances tending to shew that the Plaintiff was not a pauper not being specifically denied. *Mather* v. *Shelmerdine.* vol. 7, p. 267

11. Cases stated in which a *feme covert*, suing by her next friend, has been admitted to sue in *formâ pauperis*, and observations on *Pennington* v. *Alvin* (1 *Sim. & St.* 264). *Dowden* v. *Hook.* vol. 8, p. 399

12. A married woman may sue in *formâ pauperis*, *Semble*; but the pauper order cannot be obtained as of course. *Coulsting* v. *Coulsting.* vol. 8, p. 463 (*Oldfield* v. *Cobbett.* vol. 3, p. 432 *Page* v. *Page.* vol. 16, p. 588)

13. Liberty given to a married woman to file a bill without a next friend, and sue in *formâ pauperis.* *Re Foster.* vol. 8, p. 525

14. A party being in possession and enjoyment of the property in question, which was worth 140*l.*, and 10*l.* a year, dispaupered. *Taprell* v. *Taylor.* vol. 9, p. 493

15. Pauper order discharged, the party being in receipt of an annuity though it was the subject of the suit. *Butler* v. *Gardener.* vol. 12, p. 525

16. A claimant allowed to proceed in *formâ pauperis* under the Trustee Relief Act. *In re Money.* vol. 13, p. 109

17. An order giving liberty to an infant, suing by a next friend, to proceed in *formâ pauperis*, discharged, with costs, as irregular. *Lindsey* v. *Tyrrell.* vol. 24, p. 124

FORMAL PARTIES (SERVICE ON).

1. Bill filed in *July*, application on the 4th of *December* for leave to serve copy bill. Motion refused on account of the unexplained delay. *Horry* v. *Caldor.* vol. 7, p. 585

2. Liberty given, after great delay, to serve copy bill under the particular circumstances. *Bell* v. *Hastings.* vol. 7, p. 592

3. To obtain an order to enter a memorandum of service of a copy bill, it is not necessary to shew, by affidavit, that no account, &c., is thereby prayed; the certificate of counsel of the fact is sufficient. *Jones* v. *Skipwith.* vol. 8, p. 127

4. Whether a party of unsound mind can be proceeded against by service of copy bill, *quære.* *Pemberton* v. *Langmore.* vol. 8, p. 166

5. The Attorney-General cannot be proceeded against by service of copy bill under the 23rd Order of *August*, 1841. *Christopher* v. *Cleghorn.* vol. 8, p. 314

6. Where a suit relates to a wife's separate estate, she, as well as her husband, must be served with a copy bill. *Salmon* v. *Green.* vol. 8, p. 457

7. Where the Court can order substituted service of a copy bill under the 23rd Order of *August*, 1841, *quære.* *Thomas* v. *Selby.* vol. 9, p. 194

8. A copy bill was served, without leave, after the expiration of twelve weeks. The Court, on the joint application of the Plaintiff and the Defendant, gave liberty to enter a memorandum of service. *Tugwell* v. *Hooper.* vol. 10, p. 19

9. *A.* and *B.*, the representatives of a surviving trustee, were made parties to a suit respecting the trust property, and were served with a copy bill, and not with *subpœna.* They objected from the beginning, but did not intervene. New trustees were appointed, and seven years

afterwards an order was made, in the absence of *A.* and *B.*, for the distribution of the fund and delivery out of Court of the title-deeds. A petition by *A.* and *B.* to discharge the order was dismissed with costs. *Doyle* v. *Doyle.* vol. 12, p. 471

FOUR-DAY ORDER.

1. The four-day order to enforce the production of documents in the Master's office by a party to the cause, does not require personal service. *Hobson* v. *Sherwood.* vol. 6, p. 63
2. To obtain a four-day order against a solicitor for the non-delivery of his bill, it must appear that the previous order has been personally served. *Re Wisewold.* vol. 10, p. 357
3. Costs are not given on granting the four-day order. *In re Christmas.* vol. 19, p. 519

FRAUD.

[*See* BREACH OF TRUST, CATCHING BARGAINS, DELAY, ESTOPPEL, FOLLOWING ASSETS, &c., FRAUD OF AGENT, FRAUD OF MARITAL RIGHTS, MISREPRESENTATION, UNDUE INFLUENCE.]

1. By a deed, which represented the wife to have the dominion over the fee of an estate, by means of a power the wife appointed and the husband and wife conveyed the fee by way of mortgage. The estate was really settled to the separate use of the wife for life, with remainder to the husband for life, with remainders over. The mortgage money was decreed to be raised out of the life estates. *Wainwright* v. *Hardisty.* vol. 2, p. 363
2. *A.* employed *B.*, a stockbroker, to purchase some canal shares. *B.* apparently bought them from *C.*, the ostensible owner, but who afterwards turned out to be a mere trustee for *B.* The Court, after a lapse of several years, and without entering into the question of the fairness of the price, Held, that the transaction was void on the grounds of public policy, and set it aside with costs. *Gillett* v. *Peppercorne.* vol. 3, p. 78
3. Whether, where *A.*, a residuary legatee, by artful and fraudulent misrepresentation to the testator of the character of *B.*, induces the testator to revoke a legacy given to *B.*, the benefit of which revocation results to *A.*, this Court has jurisdiction to affix a trust on *A.* in favour of *B.*, to the extent of the fruit of the fraud possessed by *A.*, or whether the matter belongs exclusively to the Ecclesiastical Court; and secondly, whether such trust can be declared after a sentence of the Ecclesiastical Court, in which the question of undue influence was in issue, *quære.* Held in the affirmative by the Master of the Rolls, and in the negative by the Lord Chancellor. The parties thereupon appealed to the House of Lords. *Allen* v. *M'Pherson.* vol. 5, p. 469
4. This Court has concurrent jurisdiction with courts of law in cases of fraud, but there are courses of conduct which this Court construes as fraudulent, but which courts of law would not notice. *Clarke* v. *Manning.* vol. 7, p. 162
5. Upon an injunction to restrain an action at law, on the ground both of legal and equitable fraud, the Court, admitting its jurisdiction to determine the legal fraud, permitted the action to proceed, in order to determine the question of legal fraud, and restrained execution only, with liberty to apply. The jury having found that there was no legal fraud, this Court afterwards entered into the consideration of the question of equitable fraud, and finding none to exist, permitted execution to be taken out. *Ibid.*
6. Sale by an administrator to his brother and co-partner set aside, it appearing to the Court, from the evidence, that the sale was made at an under-value so gross, that it ought to be deemed fraudulent and void. *Rice* v. *Gordon.* vol. 11, p. 265
7. *A.* transferred shares to *B.* by a deed executed by both parties, which admitted the payment of the consideration money. The money not having really been paid, *A.* filed a bill against *B.* to compel payment. *B.* stated that a third person (*C.*) had told him that he had purchased the shares and put them into *B.*'s name as a trustee, and that *B.* would incur no responsibility, as the shares had been paid for; that he (*C.*) produced the deed in question, which he (*B.*) signed, on the faith of the recital contained in it, that the purchase-money had been paid. Held, that this was no defence to the Plaintiff's demand, and that *B.* was bound to pay the purchase-money. *Wilson* v. *Keating.* vol. 27, p. 121
8. The wife's separate estate was invested in shares, in the joint names of herself and her husband. The husband induced his wife to join in selling them, upon his promise to re-invest the produce in their joint names. The husband alone received the produce, and, unknown to his wife, he employed it in part payment for the purchase of a real estate conveyed to him alone. The wife survived her husband. Held, that she was entitled to a lien on the real estate for the amount. *Scales* v. *Baker.* vol. 28, p. 91

9. Real estates, devised for sale, were vested in trust for parents for life, with remainder for their children. In 1839 the parents and children sold and conveyed their interests to the Plaintiff, who remained in undisturbed possession until the death of the tenants for life (1856). In 1853 the purchaser filed his bill against the trustee and the vendors to obtain the legal estate. The Court, on the ground of the unfairness of the transaction as regarded the children, dismissed the bill, but refused to grant any active relief to the Defendants. It held also, that the transaction was not affected on either side by the lapse of time. *Hannah* v. *Hodgson.* vol. 30, p. 19

FRAUD OF AGENT.

1. The Defendant, through the agency of one *Yates*, granted to the Plaintiff an annuity, redeemable on six months' notice. In *May*, 1830, notice was given to repurchase in *November*, and in *August*, 1830, the Defendant entrusted *Yates* with the money for the repurchase. In *October* *Yates* prevailed on the Plaintiff to execute the deed of re-assignment dated in *November*, indorsed on the annuity deed, and without receiving the repurchase money, but the Plaintiff did not sign any receipt for the money. *Yates* afterwards produced the deed to the son of the Defendant, to satisfy him of the payment, and it was handed back to *Yates* to be kept by him, with the Defendant's other documents. *Yates* acted in the transaction as agent of both parties. He retained the money, and, to deceive both, continued the payment of the annuity, but afterwards died insolvent. The Defendant subsequently obtained possession of the deed. Held, under the circumstances, that the Defendant was not discharged, but was bound to pay to the Plaintiff the repurchase money with interest from *November*, 1830, the Plaintiff accounting for the subsequent receipts of the annuity. *Vandaleur* v. *Blagrave.* vol. 6, p. 565

2. *A.* authorized his solicitor to borrow 700*l.* from *B.* to pay off a mortgage, and for that purpose executed a bond and a transfer of the mortgage. The solicitor, who had in his hands 700*l.* belonging to *B.*, handed over to him the bond, in which it is stated that it was intended as a collateral security. The solicitor retained the transfer, which was never executed by the mortgagee, and afterwards absconded without having paid off the mortgage. The Court relieved *A.* from the bond. *Young* v. *Guy.* vol. 8, p. 147

3. The Defendant employed a stockbroker to obtain a loan on the security of bonds, which were transferable by delivery. The broker, accordingly, borrowed a sum from the Plaintiff, but he wrongfully applied a part to his own use. The broker was unable to redeem the bonds, and the Defendant, with knowledge of the circumstances, promised and agreed to call and give the broker his cheque for the deficiency on receiving back the bonds. The broker, acting on the faith of this promise, gave a crossed cheque to the Plaintiff, and redeemed the bonds. On the same day the Defendant, by a trick, obtained possession of the bonds without giving his cheque; and the broker's crossed cheque was consequently returned, and he became a defaulter. Held, that the Defendant was responsible to the Plaintiff for the fraud, and that the bonds in his hands were still liable to repay the Plaintiff his debt. *Mocatta* v. *Bell.* vol. 24, p. 585

FRAUD ON MARITAL RIGHTS.

1. If a woman entitled to property, during the treaty for marriage represents to her intended husband that she is so entitled, that upon the marriage he will become entitled *jure mariti*, and if during the same treaty she clandestinely convey away the property in such manner as to defeat his marital right, and secure to herself the separate use of it, and the concealment continues until the marriage, a fraud is thus practised on the husband, and he is entitled to relief. *England* v. *Downs.* vol. 2, p. 522

2. Direct misrepresentations, or wilful concealment with intent to deceive the husband, would entitle him to such relief; and if both the property and the mode of its conveyance pending the marriage treaty be concealed from the intended husband, there is still a fraud practised on him; cases have, however, occurred in which concealment, or rather the non-existence of communication to the husband, has not been held fraudulent; and whether fraud is made out must depend on the circumstances of each case. *Ibid.*

3. As a conveyance made immediately before her marriage is *primâ facie* good, it is to be impeached only by the proof of fraud. *Ibid.*

4. In *August* a widow, having a second marriage in contemplation, settled her property on herself for life, for her separate use, with remainder to the children of her first marriage, and in *October* following she married. The settlement was prepared by her direction, without the privity or assent "of her then intended husband." In a suit to carry the settle-

ment into execution, the second husband insisted on the settlement being a fraud on his marital rights, but it was not proved that in *August* he was "the intended husband." Held, that the evidence was insufficient to impeach the deed. *England* v. *Downs.* vol. 2, p. 522

5. A husband who had notice of a settlement which he might have disputed, previously to his marriage, and had for some years after acquiesced in it, held to be bound thereby, and to have no interest in the settled property. *Ashton* v. *M'Dougall.* vol. 5, p. 56

6. A settlement, made by a woman pending an engagement and seven weeks before her marriage, without the knowledge of her intended husband, and in favour of persons for whom she was under no legal or moral tie to provide, was set aside as a fraud on the husband's marital right. *Downes* v. *Jennings.* vol. 32, p. 290

7. A delay of two years and a half after knowledge in taking proceedings to set aside a deed as a fraud on the marital rights, held not sufficient to deprive the husband of his right to relief. *Ibid.*

FRAUDULENT CONVEYANCE.

[*See* VOLUNTARY SETTLEMENT.]

1. A party largely indebted made a voluntary settlement, and became insolvent within three years. Held, sufficient to avoid the settlement under the 13 *Eliz.* c. 5; and held also, that in order to set it aside it was not necessary to prove that the settlor was in a state amounting to insolvency. *Townsend* v. *Westacott.* vol. 2, p. 340

2. *A.*, being liable to the Plaintiffs for a breach of trust, conveyed his property to his son, in consideration of a life annuity of 60*l.* The consideration for the conveyance was greatly inadequate. The father was in a dangerous state of health, and died seven days after, leaving no property. The conveyance was set aside as fraudulent, for the benefit not only of the Plaintiffs but of all the other creditors of *A.* *Strong* v. *Strong.* vol. 8, p. 408

2*a*. A husband, before marriage, covenanted to settle his after-acquired property as his wife should appoint; he was insolvent at the time. Held, nevertheless, that the covenant, however imprudent, was good as against his creditors. *Hardey* v. *Green.* vol. 12, p. 182

3. In 1842 a husband, pending proceedings against him in the Ecclesiastical Court for a divorce, executed a voluntary settlement of real and personal estate. Sequestration afterwards issued against him, which was defeated by the deed. This Court set aside the deed. *Blenkinsopp* v. *Blenkinsopp.* vol. 12, p. 568

4. A testator had transferred property into the names of his sons. Held, that they were advancements, but there being doubts as to his solvency at the time inquiries were directed on the point. *Christy* v. *Courtenay.* vol 13, p. 96

5. A deed may be void as against creditors though full consideration is given for it, if it be in such a form as to defeat the creditors and be executed with that intention. *Bott* v. *Smith.* vol. 21, p. 511

6. In *June*, 1854, the Plaintiff recovered a judgment against *E. S.*, as overseer of a parish, for 238*l.*, and three days after, an order *nisi* issued for an attachment. In *September* following, *E. S.* conveyed all his estate and effects to his son, in consideration of his lodging, maintaining and clothing him for life, and paying 75*l.* on his death, and indemnifying him against a mortgage debt on the property, and which he secured by bond. The full consideration was not given, but the difference was not great. The Court being of opinion that the deeds were made with a view of defeating the Plaintiff's execution, set aside the transaction as against the creditors. *Ibid.*

7. In 1842 the testator executed a voluntary bond, payable after his death, and, in 1850, he made a voluntary settlement in favour of other parties. His assets proved insufficient to pay the bond. Held, that there was not sufficient ground for holding that the deed was fraudulent as against the bond creditors, and that the *onus* of proving the deed to be fraudulent attached to the obligees of the bond. *Dening* v. *Ware.* vol. 22, p. 184

8. Prior to his marriage, a husband entered into a parol contract to settle his intended wife's property. The property was not settled until after the marriage. Held, that the ante-nuptial parol contract was inoperative under the Statute of Frauds, that the marriage was not a part performance, that the postnuptial settlement was voluntary, and the husband being greatly indebted at the time, the settlement was void as against the husband's creditors. *Warden* v. *Jones.* vol. 23, p. 487

9. Voluntary gift of leaseholds by a father to his sons, in 1835 and 1841, set aside, it being ascertained, on a reference, that at those periods the settlor's debts exceeded his assets. *Christy* v. *Courtenay.* vol. 26, p. 140

10. When a voluntary settlement of lands is avoided by a subsequent sale for valuable consideration, the volunteers have no equity against the purchase-money payable to the settlor. *Daking* v. *Whimper.* vol. 26, p. 568

11. The stat. of 13 *Eliz.* c. 5, extends to fu-

ture as well as existing debts, and a deed having for its object to defraud future creditors is void under that statute. *Barling* v. *Bishopp.* vol. 29, p. 417

12. After notice of trial in an action of trespass, the Defendant executed a voluntary conveyance of real estate to his daughter. The verdict went against him, and he afterwards took the benefit of the Insolvent Debtors' Act. Held, that the conveyance was void under the 13 *Eliz.* c. 5, it being intended to defeat the Plaintiff in the action. *Ibid.*

13. Policies of assurance are, since the 1 & 2 *Vict.* c. 110, s. 12, within the Statute of Fraudulent Conveyances (13 *Eliz.* c. 5). *Stokes* v. *Cowan.* vol. 29, p. 637

14. Assignment by a person *in extremis* of a policy on his life set aside as fraudulent against his creditors. *Ibid.*

FRAUDULENT PREFERENCE.

[*See* FRAUDULENT CONVEYANCE.]

1. *A.* being entitled to three debts, covenanted with *B.*, that in case he received them in full, he would pay him 1,000*l.*, but in case he should receive part only, he would pay one-third of the sum recovered. *A.* received one of the debts, which he wholly retained. Afterwards, and within three months before *A.*'s imprisonment and taking the benefit of the Insolvent Act, he (without pressure) assigned one of the debts to *B.*, to secure one-third of the debt recovered and those still unpaid. It was set aside as fraudulent under the act. Held, also, that *B.* had not, as against the insolvent's assignees, any lien on the remaining debts, for the one-third of the first debt improperly retained by *A. Harries* v. *Lloyd.* vol. 6, p. 426

2. Security given by a trader to a *bonâ fide* creditor on a *bonâ fide* pressure, set aside under the Bankrupt Act, the trader being either insolvent, or in such circumstances that the enforcement of the security would render him insolvent, and both parties having actual or constructive notice of the state of his circumstances. *Stanger* v. *Wilkins.* vol. 19, p. 626

3. *A.*, a trader, being indebted to *B.*, another trader, assigned to him certain property to secure it. *A.* was either actually insolvent at the time, or in such circumstances that enforcement of the provisions of the deed would have stopped the business; and both *A.* and *B.* knew that it was only by preserving the goodwill and by careful management that *A.* could hope to pay his debts, for which time and the forbearance of *B.* were necessary. *A.*, and probably *B.*, also knew that the former was insolvent. *B.*'s debt, however, was *bonâ fide*, and the security was executed under *bonâ fide* pressure, and contemplated the continuance of the business by *A.* and his ultimate extrication from his difficulties by the aid of *B.* Held, that the assignment came within the words of the 12 & 13 *Vict.* c. 106, s. 67, and could not be supported against the claims of the assignees of *A.*, who, soon after the assignment, had become bankrupt; but it was set aside, without costs against *B.* *Ibid.*

4. A trustee, with the consent of his *cestui que trust*, pledged *Madras* government notes, held by him in trust for the benefit of a firm of which he was partner. The notes were afterwards redeemed and delivered to the firm. Subsequently the firm, without the consent of the *cestui que trust*, pledged them for a similar purpose. The firm being insolvent, and bankruptcy imminent, the trustee redeemed the notes with partnership assets, indorsed them to himself personally, and replaced them in his private chest. The firm became bankrupt. Held, first, that the notes were not in the order and disposition of the firm; and secondly, that there was no fraudulent preference. *Sinclair* v. *Wilson.* vol. 20, p. 324

5. Remarks on the doctrine of fraudulent preference. *Johnson* v. *Fesenmeyer.* vol. 25, p. 88

6. If a trader, on the eve of bankruptcy, yielding to the *bonâ fide* pressure of a creditor, give him a security on part of his property, this is not a fraudulent preference, although both parties may be aware of the impending bankruptcy; but if the debtor, even on pressure, assign the whole of his property to a creditor, so as to disable him from continuing to carry on his business, this is a fraudulent preference and invalid against the other creditors upon a bankruptcy. The same result follows, where an exception from the whole property assigned is merely colourable. *Ibid.*

7. Assignees of a bankrupt cannot, at the hearing, insist on a case of fraudulent preference, unless they have raised it by their pleadings. *Holderness* v. *Rankin.* vol. 28, p. 180

FREEBENCH.

1. The admittance to copyholds has reference back to the surrender; so that, where copyholds are surrendered to *A.*, who dies before admittance, the admittance of *A.*'s heir has reference back to the date of the surrender, and supplies in *A.* such a seisin as to entitle his widow to freebench. Held, by the Master of the Rolls, that a customary heir, who enjoys, as heir, copyhold surrendered to his ancestor, but who died before ad-

mittance, cannot, by neglecting or declining to procure admittance, defeat the right of the ancestor's widow to freebench, and such heir was declared a trustee, in respect of such freebench. The Lords Justices, on appeal, were, however of a different opinion. *Smith* v. *Adams*. vol. 18, p. 499

2. A widow held not entitled to freebench out of a moiety of copyholds, to which her husband was seised in remainder subject to an existing life estate. *Ibid.*

3. A marriage settlement, "in order to make some provision for" the intended wife, in case she should survive her husband, settled some of the husband's copyholds, after his death, on her for life. Held, that she was not thereby barred of her freebench in other copyholds, of which the husband died intestate. *Willis* v. *Willis*. vol. 34, p. 340

FREIGHT.

[*See* SHIP.]

FRIENDLY SOCIETY.

[*See* BUILDING SOCIETY, INSURANCE.]

1. An officer of a friendly society, entrusted with moneys of the society jointly with another person who is a member but not an officer of the society, is not within the summary remedy provided by the eighth section of the act 33 *Geo.* 3, c. 54. *In the Matter of the Heanor Friendly Society*. vol. 1, p. 508

2. The stewards of a friendly society who were, in fact, but not in name, trustees of the society, allowed to petition under that act by the description of trustees. *Ibid.*

3. Moneys were borrowed for a friendly society and applied for its benefit. Held, that a valid debt was constituted as against the society, although the formalities required by its rules had not been followed. *Pare* v. *Clegg*. vol. 29, p. 589

4. The Friendly Societies Act (18 & 19 *Vict.* c. 63, s. 23) requires the assignees, &c. of the officers of such societies "upon demand in writing" to pay the debts due from such officers in priority of his other creditors. Held, that a bill filed to recover the amount is a sufficient "demand in writing." *Absolom* v. *Gething*. vol. 32, p. 322

5. The priority over other creditors, which is given to friendly societies for debts due to them from their treasurer, &c. is not lost by their neglecting, for some time, to make him give the security required by their rules and by statute, nor by their neglect to audit his accounts. *Ibid.*

FUND IN COURT.

[*See* EXECUTOR, PAYMENT IN, PAYMENT OUT.]

1. The costs of transferring funds, from the name of a testator into the names of the executors, disallowed. *Hopkinson* v. *Roe*. vol. 1, p. 183

2. Disapproval of the practice of advancing money out of funds in Court, to enable parties to try an issue directed by the Court. *Johnston* v. *Todd*. vol. 3, p. 218

3. In order to save the expense of serving different parties, an inconsiderable aggregate fund was ordered to be severed and carried over to separate contingent accounts. *Handley* v. *Metcalfe*. vol. 9, p. 495

4. Legacy carried over to a separate contingent account, in order to avoid the expense of serving all the parties interested. *Cazalet* v. *Smith*. vol. 11, p. 177

5. Observations on the effect of carrying over funds to separate accounts in the Accountant-General's books, and to the importance of affixing appropriate headings thereto. *In re Jervoise*. vol. 12, p. 209

6. When a fund is carried over to a particular separate account, it is released from the general questions in the cause, and becomes marked as being subject only to the questions arising upon the particular matter referred to in the heading of the account. *Ibid.*

FURTHER CONSIDERATION.

1. A case was alleged on the pleadings to charge executors for what they might, but for their wilful default, &c., have received; at the hearing the common accounts only were directed against them: the case coming on for further directions, on the Master's report. Held, that the executors could not be charged as for their wilful default, &c., and that no inquiry could then be directed on the subject, although the Master's report laid a foundation for such an inquiry. *Garland* v. *Littlewood*. vol. 1, p. 527 (*Green* v. *Badley*. vol. 7, p. 274)

2. Matters at issue at the first hearing, which are neither decided, put into a train of investigation, or reserved, must, on further directions, be regarded either as abandoned or as points on which the Plaintiff was entitled to no order. *Passingham* v. *Sherborn*. vol. 9, p. 424

3. At the first hearing, liberty was given to the Defendant to bring an action as to a charge. He abstained from so doing. Held, that in the absence of some proper excuse, the charge must be considered as having failed. *Ibid.*

4. By his will the testator gave his widow a

life interest in his personal estate, which consisted partly of leasehold and long annuities, the income of which the widow enjoyed. A bill was filed by the remainderman against the widow (who was an executrix) and the other executors, raising no question as to the enjoyment in specie. At the hearing it was determined, that the widow was not entitled to enjoy the long annuities in specie, but nothing was determined as to the leaseholds, and accounts were directed. Held, that the widow could not, on further directions, be charged with the excess of the rents of the leaseholds beyond the income arising from the fund which would have been produced by their sale, *Morgan* v. *Morgan*. vol. 13, p. 441

5. An executrix and tenant for life unnecessarily and improperly sold out a sum of stock; a common decree for an account was made against her representatives. Held, that her estate was liable to replace the stock and dividends, and that relief might be had on further directions, though the particular matter was not charged by the bill. *Davenport* v. *Stafford*. vol. 14, p. 319

GAME.

A demise of the exclusive right of sporting over a farm does not justify the lessee in turning out on it game not bred thereon in the ordinary way. *Semble* also, that in such a case the lessor is justified in keeping down the excess. *Birkbeck* v. *Paget*. vol. 31, p. 403

GAS COMPANY.

A. and *B.*, the owners of an estate, laid it out for building purposes, and devoted a portion of it to roads; on a partition of the estate, the soil of the roads was vested in *A.*, who covenanted that the owners and occupiers of all the land should have the full use and enjoyment of the roads "as if the same were public roads." Held, that though the roads were not actually dedicated to the public, yet that a district gas company, upon the requisition of the owners and occupiers, had a right, under "The Gasworks Clauses Act, 1847," to break the soil of the roads to lay down their mains without the assent of *A.* and his representatives. *Selby* v. *The Crystal Palace District Gas Company*. vol. 30, p. 606

GENERAL ORDERS.

Order to elect made in the case of a claim, though not literally within the orders. *Davison* v. *Mason*. vol. 18, p. 540

GENERAL WORDS.

[*See* DESCRIPTION OF GIFT, RECITALS.]

1. Leaseholds which were not specified in a deed. Held, not to pass by the general words, all other "property and effects." *Hopkinson* v. *Lusk*. vol. 34, p. 215

2. By a deed executed by a trustee of a banking company on his retiring, he assigned three specified policies held for securing debts due to the bank and the debts themselves. He also assigned leaseholds *X.*, mortgaged to him for securing a debt due to the bank, "and all other moneys, securities, property and effects" vested in him and four others as trustees for the company. Held, that leaseholds *Y.*, belonging to bank absolutely and vested in the retiring trustee and the same other four trustees, but which were not referred to in the deed, did not pass under the above general words. *Ibid.*

GIFT.

[*See* DONATIS MORTIS CAUSA, GIFT OVER, GIFT TO A CLASS, IMPLICATION (GIFT BY), VOLUNTARY SETTLEMENT, &c.]

GIFT OVER.

[*See* FORFEITURE, VESTING.]

1. A testator, in case any person should give a suitable piece of land for almshouses, gave a sum of money to be devoted to the charity, with a gift over of the fund, if no such piece of land should be provided or the scheme should not be approved of by his trustees. The land was provided, and no difficulty interposed as to the scheme, but the gift of the money was held void as contrary to the policy of the Mortmain Act. Held, that the gift over did not take effect. *Philpott* v. *St. George's Hospital*. vol. 21, p. 134

2. By a marriage settlement, a fund was settled, after the death of the survivor of the husband and wife, in trust for the "children then living," to be paid at twenty-one, and in case the parents should die "without leaving any lawful issue," then as the husband should appoint, and in default, "in case there should be no child or children as aforesaid," over. Children attained twenty-one, but they all died in the life of their parents, leaving issue, who survived the parents. Held, that the gift over took effect. *In re Heath's Settlement*. vol. 23, p. 193

3. Gift over, in case *A. B.* should die "before marriage and leave no issue." Held, to take effect only on the hap-

pening of both events. *Seccombe* v. *Edwards.* vol. 28, p. 440

4. Shifting clauses, which take away an estate from the owner, are construed strictly. *Walmesley* v. *Gerard.* vol. 29, p. 321

5. Construction of a shifting clause. *Lord Kenlis* v. *The Earl of Bective.* vol. 34, p. 587

6. A testator directed two estates to be purchased (*A.* and *B.*). The estate *A.* was to be settled on the sons of his daughter (except Lord *K.*, the eldest), and their issue, and in default on *K.* for life, with remainder to his first and other sons in tail, with remainder to his issue in tail general, with remainders over to daughters of the daughter. Estate *B.* was to be settled on Lord *K.* for life, with remainder to his first and other sons in tail, and afterwards to the same uses as the estate *A.* There was a shifting clause determining the estate of Lord *K.* and his first and other sons in estate *B.*, in case he or his issue male became entitled to estate *A.* *K.* having become entitled to estate *A.*, it was held, that his first life estate alone in estate *B.* had ceased, but that his second life estate therein, expectant on the failure of younger sons of the daughter, was still subsisting. *Ibid.*

GIFT TO A CLASS.

[*See* CHILDREN, GIFT TO A CLASS (SUBSTITUTION), NEXT OF KIN, "PER CAPITA" OR "STIRPES," RELATIONS, REPRESENTATIVES, SURVIVORSHIP, VESTING.]

1. Bequest in trust for all the children of the testator's late uncle *J. B.* deceased, to be divided equally amongst them and the issue of such of them as should be deceased, share and share alike, such issue to be entitled to the share of his deceased parents equally amongst them. Held, that a grandchild of *J. B.*, whose parent was dead at the date of the will, was entitled to take. *Bebb* v. *Beckwith.* vol. 2, p. 308

2. Bequest of residue, in trust, after payment of an annuity of 50*l.* to *A.* for life, to apply the residue of the interest towards the maintenance of the children of *B.* until twenty-one, and in case of the death of *A.* during their minority, to apply the whole or so much as was necessary in the same way, and after the death of *A.*, when such children attained twenty-one, to transfer the principal to them. There was a gift over in case there should be no children of *B.* living at the death of *A.* The fund was more than sufficient to provide for the annuity. Held, that the gift to the children was not confined to those living at the death of the testatrix. *Gardner* v. *James.* vol. 6, p. 170

3. Gift to a lady for life, and, after her death, amongst all her children "which should be living at her death," and if but one, to such only child, such shares to become vested interests at twenty-one. The lady being sixty-three, and desirous of giving up her life interest, she and her children, all of whom had attained twenty-one, presented a petition for payment to the children. One of the children was a *feme covert.* The Court declined making the order. *Brandon* v. *Woodthorpe.* vol. 10, p. 463

4. A class of children being interested, the Court, instead of directing the preliminary class inquiry, received the affidavit of the parents proving the class, and then allowed the cause to be heard. *Bush* v. *Watkins.* vol. 14, p. 33

5. Bequest to *A. B.* for life, and after his death to "all the present born children of *A. B.* equally." One of them died between the date of the will and the death of the testatrix. Held, that his share did not lapse, but that the bequest, being to a class, the whole was divisible amongst those who survived the testatrix. *Leigh* v. *Leigh.* vol. 17, p. 605

6. Under a gift to one for life, with remainder "to my grandchildren." Held, that the bequest was not limited to grandchildren to whom legacies had previously been given *nominatim*, but that all the grandchildren who came into *esse* prior to the period of distribution were entitled. *Moffatt* v. *Burnie.* vol. 18, p. 211

7. After the death of the annuitant, the testator directed that "the principal from which such annuity was derived should be equally divided between her five daughters then in existence and any other children, whether male or female, that might yet be born." Held, that the five daughters, and all the after-born children of the annuitant, were entitled to the fund producing the full annuity, in equal shares. *Attwater* v. *Attwater.* vol. 18, p. 330

8. Bequest to wife for life, and afterwards to all the testator's nephews and nieces living at the death of his wife,—namely, "all the children of my brother *S. H.*" &c. (naming the greater part, but not the whole of his brothers and sisters, and excepting one of his nieces by name, and giving her a legacy). Held, that this was not a gift to a class consisting of all the testator's nephews and nieces, but to the children only of those brothers and sisters who were specifically named. *In re Hull's Estate.* vol. 21, p. 314

9. Devise, after prior interests "equally" amongst the testator's "legal personal representatives, in such and the like manner as if the same had been to be paid under the Statute of Distribution." Held, that

the class were to be ascertained at the testator's death, and that the testator's widow and his only son took, not equally, but according to the statute, *i. e.* one-third to the widow, and two-thirds to the son. *Holloway* v. *Radcliffe*.
vol. 23, p. 163

10. A testator directed a reversionary sum to fall into his residue. He gave an annuity to *A.* for life, and his residue to a class of children who should attain twenty-one. The only residue was the reversionary sum and the fund set apart to answer the annuity. On the death of *A.*, Held, that children born in the life of *A.*, but after one of the class had attained twenty-one, were excluded, and did not participate in the fund then distributable. *Hagger* v. *Payne*. vol. 23, p. 474

11. Under a bequest in trust for all the sons and daughters of *A.*, *B.* and *C.* (who were living) who shall attain twenty-one, it was held, that the class was not to be ascertained on the first of the class attaining twenty-one, in consequence of the will containing a power of maintenance and advancement, whether they "shall or not" have attained twenty-one, and notwithstanding the liability of the share to be lessened by the subsequent addition to the class entitled to the entire fund. *Iredell* v. *Iredell*. (No. 2.)
vol. 25, p. 485

12. Bequest of 100*l.* each to the two sisters, and his ornaments to be equally divided amongst the unmarried ones. Held, that the class of unmarried daughters was to be ascertained at his death. *Blagrove* v. *Coore*. vol. 27, p. 138

13. A testator, a widower, appointed a trust fund, over which he had an exclusive power of appointment, in favour of his children, "to be equally divided among my sons, and also any other sum of money that I may die possessed of." He had previously named all his children. Held, that the sons took as a class, and that those who survived the testator were entitled to the whole fund. *Fitzroy* v. *The Duke of Richmond*. (No. 1.)
vol. 27, p. 186

14. A testator, having five daughters, gave a legacy to one and the residue to the remaining four (by name) "and their issue;" but he afterwards directed, that any subsequent-born daughters and their issue should be entitled to equal shares with the four daughters. One of the four died without issue in the life of the testator. Held, that there was no intestacy, that the daughters took as a class, and that those who survived took absolutely. *Re Stanhope's Trusts*. vol. 27, p. 201

15. A testator bequeathed legacies of "500*l.* a piece to each child that may be born" to either of the children of my brothers. Held, that the class included only the children coming into *esse* between the date of the will and the death of the testator, and that children born at the date of the will and those born after his death (unless *en ventre sa mère* at that period) were excluded. *Townsend* v. *Early*.
vol. 28, p. 429

16. A testator bequeathed stock to his aunt for life, and, after her death, to his father, "and, in case of his death, then to devolve on his brothers and sisters or their representatives." The father and two brothers predeceased the aunt. Held, that the "death" of the father meant death in the life of the tenant for life; that the brothers and sisters who survived the aunt, and the representatives of those who predeceased her, were entitled to the stock. Secondly, that "representatives" meant executors or administrators, and not next of kin, and that they took as trustees, and not beneficially. *Re Henderson*. vol. 28, p. 656

17. A testator devised all the estates before specified to his sister's "family," and proceeded thus:—"I give to *J. R. D.* (who was the sister's son) my *Dalton* estate, and the rest to be sold and divided equally." Held, that the children of the sister, including *J. R. D.*, took the produce of the sale equally. *Reay* v. *Rawlinson*. vol. 29, p. 88

18. Bequest to all the children of *A.* "now born or hereafter to be born," who shall attain twenty-one, in equal shares; with powers of maintenance out of and for accumulation of income, and of advancement out of the "presumptive shares." Held, that on the first child attaining twenty-one the class was ascertained, and that the children afterwards born were excluded. *Bateman* v. *Gray*.
vol. 29, p. 447

19. A testator devised an estate to his sons *Phineas* and *John* equally, during the life of *Phineas*, and until his youngest child attained twenty-one, and on the death of *Phineas*, and on the youngest child attaining twenty-one, to sell it and pay one half of the money to *John* and his heirs, and the other half among the then living children of *Phineas*. "But," said the testator, "in case of *John's* death without lawful issue before the said division takes place, then I give his half share to and amongst my then living grandchildren, share and share alike." *John* died without issue in 1827, *Phineas* died in 1858. Held, that the grandchildren were to be ascertained at the death of *Phineas*, and that the representatives of a grandchild who died in 1856 took no share. *Gill* v. *Barrett*. vol. 29, p. 372

20. A testator devised a real estate to trustees in fee, in trust for all the children of his two sisters then born, or thereafter to be born, who should have attained, or

should afterwards attain twenty-one, in equal shares; and he directed that, as the same should respectively become vested, the trustees should convey the same accordingly. Held, that the children born after the testator's death took a share. *Eddowes* v. *Eddowes*.
vol. 30, p. 603

21. Bequest to a brother for life, and, at his death, "to be equally divided amongst his surviving children and my niece *R. W.*" Held, that this was not a gift to a class; and, *R. W.* having died in the life of the testator, that *R. W.*'s share lapsed. *Drakeford* v. *Drakeford*.
vol. 33, p. 43

22. Gift to *A.* for life, and after her decease to all the children of *B.*, who should be living at the testator's death or be born afterwards who should attain twenty-one, with a direction that no child should be excluded in consequence of any other child having attained a vested interest. Held, that the class was to be ascertained upon the latter of these two events, viz., a child of *B.* attaining twenty-one at the death of *A.*, and that a child born after that period was excluded. *Parsons* v. *Justice*.
vol. 34, p. 598

23. A testator having made gifts to the three children of his first marriage, gave his residue to his wife for life, with remainder to the five children of his second marriage (by name) "and such other child or children as should be living at the time of his death." Held, on the context, that the children of the first marriage were not included in the residuary gift. *Lovejoy* v. *Crafter*.
vol. 35, p. 149

24. Gift, on the decease of parents "leaving children," to all the children in default of appointment. Held, that a child need not survive the parents in order to take. *Re Gratwick*.
vol. 35, p. 215

GIFT TO A CLASS (SUBSTITUTION OF CHILDREN.)

[*See* SURVIVORSHIP, VESTING.]

1. Bequest by testator to *A.* for life, and "after death of *A.* to my four children or the survivor or survivors of them equally, *or* their heirs." One of the four children died in *A.*'s life. Held, that his children took by way of substitution. *Price* v. *Lockley*.
vol. 6, p. 180

2. Bequest by testator to *A.* for life, and afterwards "to my children *then living* or their issue, the issue to take the father's share." Held, that the issue took by substitution, and that to entitle them they must survive *A.* *Bennett* v. *Merriman*.
vol. 6, p. 360

3. Gift to *A.* for life, with remainder to the daughters of *B.*, "and their descendants, *per stirpes*, to hold to them, their heirs and assigns for ever." The daughters had children at the death of the testator and of the tenant for life. Held, that the daughters took absolute interests and in joint tenancy, and that the issue could only take by substitution. *Dick* v. *Lacy*.
vol. 8, p. 214

4. Bequest to *A.* to be paid within six months; but if he should die, not having received his legacy, then his children to be entitled to his share. *A.* predeceased the testator. Held, that his children took nothing. *Smith* v. *Oliver*.
vol. 11, p. 494

5. A testator professed to give legacies to each of twelve first cousins *nominatim*, but he enumerated eleven only, and stated the other to be dead, and desired his legacy to be paid to his children. He afterwards directed, after the decease of his wife, the whole remainder of his property "to be divided, share and share alike, to his aforesaid twelve first cousins and their children." Held, that the first cousins took vested interests at the death of the testator, subject to be divested on their deaths in the widow's life, in which event their children took by substitution. *Burrell* v. *Baskerfield*.
vol. 11, p. 525

6. Bequest to "my son *William* OR his children." Held, that the son who survived was absolutely entitled, and that the children could only take by substitution, in case of the death of their parent. *Penley* v. *Penley*.
vol. 12, p. 547

7. Bequest to *H. S.* for life, and after her decease to the testator's four brothers and sister, "or such of them as should be then living," equally. And in case any of them should be then dead, then he bequeathed his or her share to the children, "to be paid at the time before mentioned." The brothers and sister all died in the lifetime of *H. S.*, one (*A. B.*) having had no children. Held, that the representatives of *A. B.* were entitled to his share, and that all the children took, whether living at the death of *H. S.* or not. *Masters* v. *Scales*.
vol. 13, p. 60

8. Children cannot take by substitution for their deceased parent, who forms one of a class, unless the parent, if living, could himself have taken. *Coulthurst* v. *Carter*.
vol. 15, p. 421

9. Bequest (in effect) to *A.* for life, and in default of her appointment, equally amongst "her sisters or their children, living at her decease." Held, first, that the children took by substitution, and therefore, that the children of a sister who was dead at the date of the will could not take; and secondly, that such of the children as were entitled took "*per stirpes*." *Congreve* v. *Palmer*.
vol. 16, p. 435

10. Distinction between a gift to several, with remainder to their children, and one to several, with a substitutional gift to their children, in respect to the children taking "*per stirpes*" or "*per capita.*" *Congreve* v. *Palmer*.. vol. 16, p. 435

11. Distinction between a substitutional gift after a bequest to persons as a class, and one following a gift to individuals *nominatim*. *Ive* v. *King*. vol. 16, p. 46

12. Bequest to *A.* for life, and, after her decease, to *B.* or his heirs, in such manner as he might deem proper, *B.* died before *A.* Held, a gift by substitution, to the next of kin of *B.*, at his and not at *A.*'s death, according to the Statute of Distributions, as tenants in common and in the same proportions. *Jacobs* v. *Jacobs*. vol. 16, p. 557

13. A testator gave his personal estate to *A.* for life, and after the decease of *A.* he directed his executors to divide it among the six children of his late sister *A. J.* (naming them), "who should be living at the time of his decease, and the issue of such of them as should be living at the time of his decease, and the issue of such of them as should then be dead, leaving issue then living, the issue to take only, such part or share as their parents, if then living, would have taken." If any of the children should die without leaving issue, his or her share was to go over to the others; and if any of the children should die leaving issue, they were to take as therein mentioned. All the six children of *A. J.* survived the testator and the tenant for life, and some of them had issue. Held, that the six children were entitled to the fund absolutely, and that, in the events which had happened, their issue took nothing. *Johnson* v. *Cope*. vol. 17, p. 561

14. Bequest to a class equally, with a substituted gift, as to the shares of any who predeceased the testator, to his "children or remoter issue," *per stirpes* of "their parents' or grandparents'" shares. Held, that the grandchildren could not claim a share, by substitution, in competition with children, but that the children alone were entitled to the exclusion of grandchildren. *Amson* v. *Harris*. vol. 19, p. 210

15. Bequest of 2,000*l.*, in trust to pay one-half of the interest to *Nathaniel* for life, and the other to *Thomas* for life, and afterwards to their wives for life. And in case, at the death of *Nathaniel* and wife, there should be issue of *Nathaniel*, to transfer a moiety to the children at twenty-one, and in case there should be no such issue, or they should die under twenty-one, then over. "And so, in like manner," upon the decease of *Thomas* and wife, the other half to be transferred to his lawful issue, "and in case of no such" issue or they shall all depart this life before they shall attain twenty-one, then over. Held, that a child of *Thomas*, who attained twenty-one, but died in the life of her mother, took no interest. *Wilson* v. *Mount*. vol. 19, p. 292

16. Bequest to *A. B.* for life, and after her death, to pay and divide it amongst her children living at her decease, and the issue of such of them as should be then dead leaving issue, such issue to take their parents' share, with a gift over if all the children of *A. B.* should die in her lifetime without leaving issue. Two children died in the life of *A. B.*, leaving children. Held, that grandchildren of *A. B.* who predeceased their parents did not take; but that grandchildren of *A. B.*, who survived their parents, but died in the life of *A. B.*, took vested interests, which passed to their representatives. *Thompson* v. *Clive*. vol. 23, p. 282

17. A testator bequeathed to *A.* 1,000*l.*, part of a policy of 1,200*l.*, and the remaining 200*l.*, together with all advantages arising from the policy, to his widow. By a codicil he gave the 1,000*l.* to trustees for *A.* and her children, and in case of *A.*'s death without children, to his widow "or her heirs." The widow died, having bequeathed the 1,000*l.* to *B.*, and *A.* died afterwards without children. Held, that *B.* was not entitled, but that the next of kin of the widow (ascertained at her death, and not at the period of distribution) took the 1,000*l.* by substitution. *In re Craven*. vol. 23, p. 333

18. Bequest to *A.* for life, and after her death, to *B.* and *C.* "or" their children. *B.* and *C.* survived *A.* Held, that their children took nothing. *Sparks* v. *Restal*. vol. 24, p. 218

19. Bequest to *A.* for life, with remainder to her children living at her death, and their issue, the issue to take the share of a deceased parent, followed by a declaration that the children should take vested and transferable interests at twenty-one, or leaving lawful issue at the time of his decease before that age. A child attained twenty-one, and died in the life of *A.* without having any issue. Held, that the representatives took no share. *In re Payne*. vol. 25, p. 556

20. Gift to one for life, and after his decease, to his children "then living, or their legal personal representatives, share and share alike." Held, that the representatives took as a distinct class and not by substitution, and that the representatives of children who died in the lifetime of the testator, and of those who were dead at the date of the will, participated. *King* v. *Cleaveland*. vol. 26, p. 26

21. Bequest to my niece and such of my

nephews and nieces as shall be then living, and the children of such of them as shall be then dead, such children to be entitled only to the part of their parents. Held, that the children of a nephew who died in the life of the testatrix participated. *Re Foulding's Trust.* vol. 26, p. 263

(See *Garey* v. *Whittingham.* vol. 5, p. 268)

22. Bequest by testator to *A.* and *B.* for their lives, and afterwards to be equally divided between my surviving brothers and sisters or their children equally. Held, that only those children who survived *A.* and *B.* participated. *Atkinson* v. *Bartrum.* vol. 28, p. 219

23. Bequest to be equally divided between *R. G.* and "my brothers and sisters, or their children," and unto *J. J.* Held, that the children of such of the brothers and sisters as were dead at the date of the will could not take by substitution. *Re Ann Wood's Will.* vol. 31, p. 323

24. A testator bequeathed a legacy to such of his nephews and nieces (children of *A. B.*) as should be living at his death equally, and he provided as follows, that in case any nephew or niece "shall die in my lifetime," leaving children living at my decease, such children should stand in their parents' place and be entitled to the share which the deceased parent would have been entitled to, if living at my decease. A child of a niece who had died prior to the date of the will was held entitled to participate in the legacy. *In re Chapman's Will.* vol. 32, p. 382

25. Gift of residue to widow for life, and afterwards to divide amongst such of six nephews and nieces "as should be living at the time of her decease;" but "if any or either of them should be then dead leaving issue," then "that such issue shall be entitled to the father's or mother's share." A nephew and his only child died in the life of the widow: Held, that the child took no interest in the residue. *Holgate* v. *Jennings.* vol. 34, p. 79

26. Whether the same conditions are (by implication) applicable to a substitutional gift as are expressed in regard to the original gift, *quære.* *Ibid.*

27. Under a gift to parents, with a gift, by substitution, to their children in the event of such parents dying leaving issue. Held, that to entitle the children, the event must happen prior to the period of distribution. *Wood* v. *Wood.* vol. 35, p. 587

28. A testator directed his real estate to be sold on the death of his widow, and the produce paid to his six "children and the issue of such of them as should die leaving issue," equally, "the issue of such children being respectively entitled amongst them to such share only as their parents would have been entitled to if living." The will contained a gift over, in case of any of the children dying in the testator's "lifetime or after his decease" without leaving a child. Held, that a child who survived the widow became absolutely entitled and that her children took nothing. *Wood* v. *Wood.* vol. 35, p. 587

GOODWILL.

1. A widow carried on the business of a licensed victualler on premises held by her from year to year. Prior to her second marriage, she assigned her household goods, furniture, stock in trade, brewing utensils, and all other her effects, upon trusts excluding her husband. She married. Held, that the goodwill of the trade, which was afterwards sold, passed by the deed as incident to the stock and licence, and not to the husband with the premises. *England* v. *Downs.* vol. 6, p. 269

2. Claim of retiring partner to a share in the value of the goodwill of the business disallowed. *Hall* v. *Hall.* vol. 20, p. 139

3. Two persons entered into partnership for twenty-one years, but in consequence of disagreements and misconduct, disputes ensued. The partnership was dissolved by decree, one consenting to retire and the other to take the stock and effects at a valuation.

Held, that the retiring partner was not entitled to any allowance for his share of the goodwill, no provision being made by the partnership articles for such an allowance on a dissolution by death or by the retirement of one partner by notice during the term. *Ibid.*

4. The estate of a deceased partner is entitled to participate in the goodwill of a business, which does not belong to the surviving partners, except by express agreement. *Wedderburn* v. *Wedderburn.* vol. 22, p. 84

5. Solicitors agreed to become partners for seven years, and stipulated that, if either retired, the continuing partner should pay him the fair marketable value of his goodwill. One gave notice two days before the expiration of the seven years. Held, under these circumstances, that he was only entitled to the value of the goodwill as for two days, and not as of a going business. *Austen* v. *Boys.* vol. 24, p. 598

6. There is no equity to prevent a surviving partner or clerk who is appointed executor from continuing the same trade, and a purchaser of the testator's goodwill

must take subject to the chance of obtaining the customers of the old establishment. *Davies* v. *Hodgson*. vol. 25, p. 177

7. The goodwill of a tobacco broker, whose brother had been, actively engaged in the business and survived him, and continued the business, held to be valueless. *Ibid.*

8. The terms "goodwill, &c.," in a contract for the sale of a foundry, are not so uncertain as alone to prevent a decree for specific performance of it; for the words *et cætera* point to things necessarily connected with and belonging to the goodwill, and to be defined in the conveyance. *Cooper* v. *Hood*. vol. 26, p. 293

9. The goodwill in a partnership business does not, on the death of one partner, survive beneficially to the others; when it has any value, a due proportion belongs to the estate of the deceased partner, but the surviving partner has still the right to carry on the same business and at the same place. *Smith* v. *Everett*. vol. 27, p. 446

10. After the decease of one of two partners in a bank, the survivor sold the business for 10,000*l*. Held, that the estate of the deceased was entitled to a share of so much of the 10,000*l*. as was attributable to the goodwill, and special inquiries were directed to ascertain the value, having regard to the fact, first, that the partnership premises belonged to the survivor; secondly, that he had still the right to carry on the same business in the same locality; and thirdly, that the sole right of issuing notes, under the 7 & 8 *Vict.* c. 32, belonged to him. *Ibid.*

11. Declaration of the rights of surviving partners to carry on the same trade after the sale of the partnership premises and business; but that, notwithstanding this, the chance of a purchaser of the partnership property to retain the old customers could not be treated as of no speculative value. *Cook* v. *Collingridge*. vol. 27, p. 456

12. As to the principle on which the value of the goodwill of a business should be ascertained, as between the partners, on a dissolution. *Mellersh* v. *Keen*. (No. 2.) vol. 28, p. 453

13. When, on a dissolution, one partner obtains exclusively the benefit of the goodwill, and is made accountable for it, the Court, in ascertaining its value, considers what it would have produced, if sold in the most advantageous manner and at the proper period of time. *Ibid.*

14. The value of the goodwill of a banking business assessed at one year's average net profits. *Ibid.*

15. The legatee of the share of the mere goodwill of a deceased partner cannot support a bill against the surviving partner to obtain the benefit of his legacy, even after assent by the executor. *Robertson* v. *Quiddington*. vol. 28, p. 529

16. *A.* and *B.* carried on business in partnership on premises belonging to the firm. *A.* died, having bequeathed his goodwill (not including the book debts or stock in trade) to the Plaintiff. The executors assented to the bequest, but had assigned the testator's interest in the trade premises to the surviving partner. To a bill by the Plaintiff against the surviving partner to realise his share of the goodwill, a general demurrer was allowed. *Ibid.*

17. Upon the decease of one partner, a decree was made for the sale of the business as a going concern, and it was proposed to sell to any purchaser "the right to hold himself out as the successor of the firm of *Samuel J. & Sons.*" Held, that the particulars of sale ought to explain that the surviving partner, *William J.*, had still a right to carry on the same business in the same town in his own name. *Johnson* v. *Helleley*. vol. 34, p. 63

GRANDCHILDREN.

[*See* CHILDREN.]

GRANT.

[*See* DEED.]

GUARDIAN.

[*See* GUARDIAN AD LITEM.]

1. Where a female appointed by the Court to be guardian of an infant marries, it is of course to make a new reference to the Master to appoint a guardian. *In re Gornall*. vol. 1, p. 347

2. The testator appointed his widow and two other persons guardians of his children. By a codicil, he "left their care, charge, and education" to his widow. Held, that the appointment by the will of guardians was not revoked by the codicil. *Hare* v. *Hare*. vol. 5, p. 629

3. Proceedings in *Ireland*, to appoint guardians to infants, adopted in *England* under the circumstances. *Daniel* v. *Newton*. vol. 8, p. 485

4. The Court exercises a control in respect of any allowance ordered to be paid to a testamentary guardian, and on the marriage of a female testamentary guardian to whom an allowance for maintenance has been ordered to be made, inquiries into the altered state of circumstances. *Jones* v. *Powell*. vol. 9, p. 345

5. A testamentary guardian is a trustee, and therefore the Statute of Limitations is inapplicable to accounts as between him and his ward. *Mathew* v. *Brise.* vol. 14, p. 341
6. Uncle and aunt appointed guardians of the person of an infant on petition without suit or reference, no allowance being asked. *In re Neale.* vol. 15, p. 25
7. Infants, who were in their mother's custody, under an agreement to restore them to the father on a given day, which she refused to do, by their bill prayed, that they might be restored to their father, to be educated in *England.* Held, that the Court had jurisdiction to take cognizance of the case, and would interfere in the manner most for their benefit, provided it could see the mode of enforcing its order. *Hope* v. *Hope.* vol. 19, p. 237
8. Whether by the stat. 12 *Car.* 2, c. 24, s. 8, a witness to a deed appointing a guardian is necessary—*quære.* *Morgan* v. *Hatchell.* vol. 19, p. 330
9. Observations as to the duty of guardians to watch over their wards. *Kay* v. *Johnston.* vol. 21, p. 536
10. A contract, by which a father deprives himself of all his parental control over his child, is contrary to the policy of the law, and void; but such a contract is valid, if the conduct of the father towards his child is so gross that the Court would remove the child from his custody. *Swift* v. *Swift.* vol. 34, p. 266
11. A father, who had criminally assaulted his infant daughter, executed a separation deed, giving the sole control of his children to his wife. It was enforced in equity. *Ibid.*
12. The father of an infant of two and a half years, originally a Protestant, had died a Roman Catholic. His widow married again and was a Protestant. The Court refused to remove the child from the custody of the mother on the ground of her religious opinions. *Austin* v. *Austin.* vol. 34, p. 257

GUARDIAN AD LITEM.

1. Guardian *ad litem* to an infant Defendant resident out of the jurisdiction, appointed on motion upon proof of her respectability, and that she had no interest adverse to that of the infant. *Smith* v. *Palmer.* vol. 3, p. 10
2. Old practice of appointing six clerk guardian *ad litem* of an infant. *Hancock* v. *Eaton.* vol. 5, p. 223
3. Where a guardian *ad litem* of a person of unsound mind, though not so found by inquisition, dies, a special application is necessary to obtain the appointment of a new guardian, and an appointment by an order of course is irregular. *Needham* v. *Smith.* vol. 6, p. 130
4. The Court nominates the guardian *ad litem* for the infant, and usually appoints the solicitor of the suitor's fund. *Thomas* v. *Thomas.* vol. 7, p. 47
5. It is not the practice of the Court to appoint a person resident abroad to be guardian *ad litem.* *Lady Hartland* v. *Atcherley.* vol. 7, p. 53
6. On an application, by motion, for the appointment, without a commission, of a guardian *ad litem* to an infant abroad an affidavit should be produced of the infancy of the party. *Lingren* v. *Lingren.* *Dick* v. *Lacy.* vol. 7, p. 66
7. On the application of the Plaintiffs, a six clerk was appointed guardian *ad litem* for a Defendant, who was stated to be an infant, but was in reality of full age. A decree was made, and the accounts taken on that footing. Held, that the proceedings were not binding on him, and the Plaintiffs were ordered to pay the costs of the six clerk. *Green* v. *Badley.* vol. 7, p. 271
8. The solicitor of the Suitor's Fund appointed, under the 28th Order of the 26th of *October*, 1842, guardian *ad litem* of a lunatic Defendant not so found by inquisition. *M'Keverakin* v. *Cort.* vol. 7, p. 347
9. Whether a guardian *ad litem* can be assigned to an infant resident *within* the jurisdiction, without bringing him into Court, or by means of a commission, *quære.* *Nixon* v. *Few.* vol. 7, p. 349
10. On an application to appoint a solicitor guardian *ad litem* to a Defendant of unsound mind, not so found by inquisition, the Court required to be first satisfied that no relative would undertake the defence. *Moore* v. *Platel.* vol. 7, p. 583
11. Notice of an application to appoint guardians *ad litem* to infants whose father was dead, was served at the house of the mother and her second husband with whom the infants were residing. Held sufficient. *Hitch* v. *Wells.* vol. 8, p. 576
12. On an application that the solicitor of a feme covert might be appointed, under the 32nd Order of 1845, guardian to defend her husband, who was a lunatic, the Court required evidence that the husband and wife had no adverse interests. *Biddulph* v. *Lord Camoys.* vol. 9, p. 548
13. The Court refused to appoint the Plaintiff's solicitor guardian of a lunatic Defendant. *Ibid.*
14. In appointing such guardian, the Court will not interfere with his discretion. *Ibid.*
15. A guardian *ad litem* must be appointed to infants who are served with petitions,

intituled "in matters" and not in causes. *In re Barrington.* vol. 27, p. 272
16. An order of course for the appointment of such a guardian *ad litem* may be obtained as of course. *Ibid.*

HEARING.

1. *A.* and *B.* were found to be next of kin by the Master, who rejected *C.'s* claim. *C.* excepted to the report, and upon an issue directed by the Court, he was found to be sole next of kin. *A.* alone moved for a new trial. Held, that *B.* might be heard in support of the motion. *Johnston* v. *Todd.* vol. 5, p. 394
2. A Defendant excepting to a Master's report, and presenting a petition of rehearing, had a right to begin. *Pringle* v. *Crookes.* vol. 7, p. 257.
3. Right of trustees of a charity to be heard as well as the Attorney-General. *Whicker* v. *Hume.* vol. 14, p. 509

HEIR.

[*See* CONVERSION, EXONERATION, HEIR (COSTS OF), ISSUE AT LAW, LIMITATION (WORDS OF), ORDER OF ASSETS.

1. The words "lawful heirs," held, upon the context of a will, to mean "heirs of the body."

A testator, having several children, directed the purchase of an estate for one of his daughters, "for her use and her lawful heirs," to be returned, "if she died without lawful heirs," to the other children that had heirs. Held, upon the context, that "lawful heirs" must be construed "heirs of the body:" that the daughter took an estate tail, and that the gift over was also an estate tail. *Simpson* v. *Ashworth.* vol. 6, p. 412
2. Gift of personalty to *A.* for life, and afterwards to his children, and in default to the *heirs* of *B.* Held, that the next of kin were entitled under the ultimate limitation. *Evans* v. *Salt.* vol. 6, p. 266
3. A testator "devised and bequeathed his lands and property whatsoever in *Australia*," together with the arrears of rents, to *A.* and *B.*, "their heirs and assigns," and he gave the residue of his estate and effects to *C.* Held, that his personalty in *Australia* passed under the first gift. *Robinson* v. *Webb.* vol. 17, p. 260
4. The words "heirs of the body" used in a will, held, by construction, to mean "children.

A devise to trustees, in trust to pay the yearly produce to *A.* and *B.* in equal shares for life, with survivorship, in case of the death of either "without issue." But if either should die "leaving issue," then her part to be paid to her "children" equally. And after the death of both *A.* and *B.*, to convey "to the heirs of the body" of *A.* and *B.*, share and share alike, or to the survivors, and if but one, then to such "only child." There was a gift over if *A.* and *B.* should die "without issue." Held, that *A.* and *B.* took life estates only, with remainder to the children, as purchasers. *Gummoe* v. *Howes.* vol. 23, p. 184
5. A testator bequeathed 1,200*l.*, in certain events, which happened, to his widow "or her heirs." The widow died, having bequeathed the money to *B.* Held, that *B.* was not entitled, but that the next of kin of the widow (ascertained at her death, and not at the period of distribution) took the 1,000*l.* by substitution. *In re Craven.* vol. 23, p. 333
6. Devise of freeholds to six persons, equally, for life, and after the death of the survivor to sell, "and the money to be equally divided amongst their several heirs." Held, that their children, and not their heirs at law, were intended. *Bull* v. *Comberbach.* vol. 25, p. 540
7. The words "next lawful heirs" in an ultimate gift of real and personal estate, construed in their strict sense as to the personalty, and the heir-at-law and not the next of kin held entitled. *Halsewood* v. *Green.* vol. 28, p. 1
8. Personal estate was settled on a husband and wife successively for life, with remainder to their children, and on failure of children, "then to the right heirs" of the survivor of the husband and wife. Held, that, under the last limitation, the heir at law of the survivor, and not the next of kin, was entitled. *Hamilton* v. *Mills.* vol. 29, p. 193
9. A testator bequeathed his residue to his widow for life, and, after her decease, to be divided between his two brothers "or their heirs," in proportion to the number each might have then living, share and share alike. Both brothers died before the widow. Held, that "heirs" was to be construed "children," and that all the children living at the widow's death took in equal shares. *Roberts* v. *Edwards.* vol. 33, p. 259
10. A share of the produce of real and personal estate directed to be sold was given to a *feme sole* for her life, "and after her decease to her *heirs*, as she shall give it by will, and if she die without leaving a will, to her *right heirs* for ever." Held, that "right heirs" was to be construed "executors and administrators." *Powell* v. *Boggis.* vol. 35, p. 535
11. The word "heirs" was used seven times in a will. It was held to mean "executors and administrators" in three places, "next of kin" in two places, "heir at

law" in one place, and trustees or executors and administrators in the last. *Powell* v. *Boggis.* vol. 53, p. 535

HEIR (COSTS OF).

1. The heir at law is only allowed costs as between solicitor and client in charity cases, and where he is a trustee. *James* v. *James.* vol. 11, p. 397
2. Costs given to heir as between party and party, although his bill was dismissed. *Whicker* v. *Hume.* vol. 14, p. 509
3. In a charity case, the heir, though unsuccessful, allowed his costs, but only as between party and party. *Ibid.* p. 528

HEIR LOOMS.

1. As to the custody of plate left as heirlooms, in the interval before any person became entitled to the possession. *Ellis* v. *Maxwell.* vol. 12, p. 104
2. A testator devised his freeholds to the first and other sons of *A.* (who was living and unmarried) successively in tail, with remainder to *B.* for life, with remainder to *B.*'s first and other sons successively in tail, &c. And he bequeathed his plate to *B.* for life, and after her decease, he gave the same "in the nature of an heirloom to the person, who, for the time being, should be in the actual possession and enjoyment of his freehold estates under the limitations of his will." In the lifetime of *A.*, *B.* and her eldest son executed a disentailing deed. *A.* survived both B. and her eldest son, and he died without having been married. At *A.*'s death, *C.* was the issue in tail of *B.*, but was not in possession of the freehold. Held, that there had been no failure of the gift of the plate, and that *C.*, and not the representatives of *B.*, were entitled to it. *Hogg* v. *Jones.* vol. 32, p. 45

HOSPITAL.
[*See* CHARITY, PATRONAGE.]

HOTCHPOT.

1. Bequest of residue to *A.* for life, with power thereout to advance her eldest son, and a gift, after *A.*'s death, of the said residue to *A.*'s children equally. Held, on the context, that the amount advanced to *A.*'s eldest son was not to be taken into account in the ultimate division of the remainder amongst *A.*'s children. *Upjohn* v. *Upjohn.* vol. 7, p. 152
2. On a marriage, two separate sums were provided by two separate deeds, for the portions of younger children, and each deed contained a hotchpot clause. Held, that these clauses were separate and distinct, and operated only on the fund contained in each settlement respectively. *Montague* v. *Montague.* vol. 15, p. 565
3. A testator gave a fund to four persons or any of them, in such shares, &c., as *A. B.* should appoint, and in default equally. He directed that such four persons should bring into hotchpot the amount of advances he might make to any of them in his life. Held, that the hotchpot clause operated only on the unappointed fund, if any. *Brocklehurst* v. *Flint.* vol. 16, p. 100
4. A settlement contained a power of advancement, a power of appointment, and a hotchpot clause, applicable to the former and not to the latter. Part of the trust fund having been taken out of the settlement and paid over to a child, without stating under which power: Held, that it was *primâ facie* attributable to the advancement clause, and that this was confirmed by subsequent memoranda in the handwriting of the donee of the power. *Re Gosset's Settlement.* vol. 19, p. 529
5. A testator, by his will, made provision for his daughter and her children, and he declared, that in case he should have made or should make "any advance of money" to any of his children or to the husbands of his daughters, which or the interest of which should not have been repaid at his death, such child should bring it into hotchpot. The testator had sold a business to his son-in-law, and taken his promissory notes for the purchase-money, and he had become liable for him as his surety. But before the date of the will the son-in-law had become bankrupt, and the testator had proved his debt. Held, that this debt was not such an advance of money as to be chargeable against the daughter and her children. *Auster* v. *Powell.* vol. 31, p. 583

HUSBAND AND WIFE.

[*See* COVENANT TO SETTLE, &c., EQUITY TO SETTLEMENT, FRAUD ON MARITAL RIGHTS, MARRIAGE, MARRIED WOMAN'S CONVEYANCE, MARRIED WOMAN'S PROPERTY, PARAPHERNALIA, PIN MONEY, SEPARATE USE, SEPARATION DEED, SETTLEMENT, VOLUNTARY SETTLEMENT, &c., WIFE'S REVERSIONARY INTEREST.]

1. Liability of husband for the breach of trust of his wife before marriage. *Palmer* v. *Wakefield.* vol. 3, p. 227
2. Bequest to Captain *A.*, his wife and children. There were two children. Held, that each child took one-third absolutely,

and the husband and wife one-third between them. *Gordon* v. *Whielden.* vol. 11, p. 170

3. A wife may, in many respects, enter into a contract for valuable consideration with her husband; so, conversely, a husband may become a purchaser from his wife of property belonging to her. *Hewison* v. *Negus.* vol. 16, p. 594
4. By a Scotch settlement the wife assigned her real and personal estate "to and in favour of herself and husband, in conjunct fee and life rent, and the children of the marriage, whom failing, the wife, her heirs and assigns." Held, upon the preponderance of opinions of Scotch advocates, that the *jus mariti* was excluded. *Duncan* v. *Cannan.* vol. 18, p. 128
5. When husband and wife are living apart, from the misconduct of the wife, the Court will not assist her in obtaining any separate maintenance, but the case is different where the separation arises from the misconduct of the husband, as where there is a divorce *à mensâ et thoro* on the ground of the husband's adultery. *Barrow* v. *Barrow.* vol. 18, p. 529
6. Bequest of the income of a fund "equally between my brother *W. S.* and his wife *Jane* and my sisters *M. M.* and *S. S.*, during their lives and the life of the survivor of them." Held, that *W. S.* and wife took two-fourths, and not one-third. *Marchant* v. *Cragg.* vol. 31, p. 398
7. A husband deserted his wife immediately after her marriage in 1846, and she was supported by her sister. In 1848, an annuity was bequeathed to her for her life, which the trustee accumulated until 1862, when the wife obtained a decree for a judicial separation. In 1863, the Court, on the petition of the wife and her sister, ordered the whole accumulations, amounting to 1,315*l.* stock, to be paid over to the sister to the exclusion altogether of the husband. *Re Ford.* vol. 32, p. 621

IDENTITY.

1. The fact that the Plaintiff had filed a bill in this Court being relied on by the Defendant as having worked a forfeiture of his interest. Held, that the mere production of the office copy was not sufficient evidence, there being no proof of identity; and, secondly, that the Defendant was not entitled to an inquiry on the point. *Williams* v. *Knipe.* vol. 5, p. 273
2. By the conditions of sale, no further evidence of identity was to be required than what was afforded by the abstract and the documents therein abstracted. The descriptions in the documents differed amongst themselves, and from the description in the particulars of sale. Held, that the purchaser was entitled to have further proof of the identity. *Flower* v. *Hartopp.* vol. 6, p. 476

ILLEGAL OR IMMORAL CONTRACT.

[*See* PUBLIC POLICY.]

1. Where a party to an illegal or immoral contract comes himself to be relieved from the obligation he has contracted in respect of it, he must distinctly and exclusively state such grounds of relief as the Court can legally attend to; he must not accompany his claim to relief which may be legitimate with claims and complaints which are contaminated with the original immoral purpose. *Balty* v. *Chester.* vol. 5, p. 103
2. The Court looks with great disfavour on an objection of illegality of a contract, urged by a party to avoid its performance after he has received the consideration for it. *Shrewsbury and Birmingham Railway Company* v. *London and North-Western Railway Company.* vol. 16, p. 44

ILLEGITIMATE CHILD.

1. A natural daughter, being included by description in a prior class of daughters, was held entitled to take with legitimate daughters, under a subsequent general gift to "my daughters." *Worts* v. *Cubitt.* vol. 19, p. 421
2. It is settled that a bequest cannot be made by a man to his future illegitimate children, for they can have acquired no title by repute; but it is not settled whether a gift can be made to the future illegitimate children of a woman. *Pratt* v. *Mathew.* vol. 22, p. 328
3. Illegitimate children cannot take under a gift to a class of children, unless it is clear that the legitimate children never could have taken under the gift. *Ibid.*
4. A testator having married his deceased wife's sister, and while living with her as his wife, made his will, whereby he gave all his real and personal estate "to my wife" for life, and after her death upon trust "for all and every my children hereafter to be born." At the date of the will, the testator had no children whatever, but two days after a son was born. Held, that the gift "to my wife" was good, but that the son could not take under the gift to children "hereafter to be born." *Ibid.*
5. A testator had only one illegitimate nephew (*John*), and only one legitimate nephew (*William*), and he had no nieces. By his will he gave a legacy to *John*, whom he described as "his nephew" and gave his residuary estate "to the children lawfully begotten of his nephews

and nieces." Held, that the children of *John* participated in the residue. *Tugwell* v. *Scott.* vol. 24, p. 141

6. Bequest to "*A.* and her daughters" equally. *A.* had an illegitimate daughter at the date of the will and never had any other daughter. *A.* predeceased the testator. Held, that legitimate daughters alone could take under this bequest, and that the construction was not altered by the circumstance, that, in the same will, there was a bequest to *B.* and her son *John*, the son *John* being illegitimate. *Kelly* v. *Hammond.* vol. 26, p. 36

7. Bequest to all and every the sons and . . . . daughters of *A.*, including . . . . who . . . . the . . . . illegitimate . . . . of *A.* Held, that the illegitimate children of *A.* could not take. *Mason* v. *Bateson.* vol. 26, p. 404

8. Bequests to illegitimate children, *in esse*, will take effect when they are appropriately described: but a prospective gift to future illegitimate children of a woman is wholly void. *Medworth* v. *Pope.* vol. 27, p. 71

9. A testator bequeathed 100*l.* a-piece to each of the sons and daughters of his deceased cousin. The cousin had two legitimate sons and one illegitimate son and one illegitimate daughter. Held, that the illegitimate daughter was entitled to a legacy, but that the illegitimate son was not. *Edmunds* v. *Fessey.* vol. 29, p. 233

10. A society on Mr. *Owen*'s system, though irrational and visionary, held, not immoral, so as to prevent a creditor recovering. *Pare* v. *Clegg.* vol. 29, p. 589

11. A deed, executed in consideration of a future cohabitation between two persons who are incapable of contracting a legal marriage is invalid. *Ford* v. *Davésiès de Pontès.* *Davésiès de Pontès* v. *Kendall.* vol. 30, p. 572

12. Bequest to *A.* and *B.* for life, and afterwards to their surviving children (which gift failed), and in default to "the children, legitimate or illegitimate, of my brother *H.*" equally. *H.* had five illegitimate children at the date of the will, two of whom pre-deceased the testator, and he had nine legitimate children after the testator's death. Held, that the gift was valid, and that the property was divisible amongst the three illegitimate and the nine legitimate children. *Barnett* v. *Tugwell.* vol. 31, p. 232

13. A daughter joined her father in covenanting to surrender a copyhold, by way of mortgage, to *A. B.* for a sum of money lent by him to the father. Part of the consideration was the permission of the father to allow *A. B.* to continue his visits to the daughter, whom he was seducing, or had seduced. Upon a bill to enforce the deed and a cross bill to cancel it, the Court at first considered that it could not interfere for either party, but ultimately ordered the deed to be cancelled, and that *A. B.* should pay the costs of both suits, except those of the father. *W*—— v. *B*——. *B*—— v. *W*——. vol. 32, p. 574

14. A settlement, made on the marriage of a widow, contained no gift to her issue, but it provided, that in default of appointment the fund should be held in trust for the persons who would be entitled, under the statute, if she had died intestate "and without having been married," and it was declared, that *A. B.*, her illegitimate daughter, should, for the purposes of that trust, be deemed to be her lawful child. Held, by the Master of the Rolls, that as lawful children could not take under this trust, so neither could *A. B.*, the illegitimate child. The Lords Justices were, however, of a different opinion. *Wilson* v. *Atkinson.* vol. 33, p. 536

IMPERTINENCE.

[*See* EXCEPTIONS TO ANSWER.]

1. Where, by the bill, a Defendant is called upon to set forth, in the ordinary form, and without any limitation being suggested by the Plaintiff, a schedule of deeds in his possession, held not impertinent to state the names of the parties to the deeds, in addition to the dates and description of the estate to which they relate. *Tench* v. *Cheese.* vol. 1, p. 571

2. Under the old practice, a Defendant could refer a bill for impertinence, unless he took steps amounting to a waiver. *Beavan* v. *Waterhouse.* vol. 2, p. 58 (*Grubb* v. *Perry.* vol. 7, p. 375)

3. Exceptions for impertinence could not be sustained, if the materiality of the passages is so connected with the merits of the cause as to render it proper matter for discussion and for the determination of the court at the hearing. *The Attorney-General* v. *Rickards.* vol. 6, p. 444

4. An information was filed by the Attorney-General at the relation of *A. B.*, to set aside a fraudulent deed executed by an outlaw in a civil action, between the judgment and inquisition. Held, that statements showing the interest of the relators and the motives for the execution of the deeds as against the creditors, were not impertinent. *Ibid.*

5. A Plaintiff may call for information of a very minute character, which the Defendant is bound in duty to afford, yet he may do it in such a way as to amount to what is called impertinence, or prolixity amounting to impertinence. *Marshall* v. *Mellersh.* vol. 6, p. 558

6. Where a party is required to set forth information, and he refers to a book containing all that information, held impertinent for him afterwards to repeat the information contained in that book. *Marshall* v. *Mellersh.* vol. 6, p. 558
7. If an answer was found impertinent, the Plaintiff was entitled to the costs. *Lewis* v. *Smith.* vol. 7, p. 452
8. Though a Plaintiff cannot compel a Defendant to make a discovery of his returns for income tax, still a statement (as evidence of a misrepresentation of the value of his business) that he made such returns, is not impertinent. *Mitchell* v. *Koecker.* vol. 12, p. 44
9. Matter ought not at the commencement of a suit to be treated as impertinent, which may at the hearing be found relevant. *Reeves* v. *Baker.* vol. 13, p. 436
10. Repetitions in a fourth examination of items contained in former examinations held impertinent. The principle applicable being the same as if the repetition had been contained in the same document. *Allfrey* v. *Allfrey.* vol. 14, p. 235
11. It is no defence to an application to strike out impertinent matter, to say that it will make the pleading inconsistent, unmeaning, or insufficient. *Ibid.*
12. The repetition of a material statement is impertinent. *Ibid.*

IMPLICATION (GIFT BY).

[*See* CROSS-REMAINDERS, REFERENCE (GIFT BY).]

1. A testator bequeathed a moiety of personal estate to his daughter for life, with remainder to her children, with remainder to the children of such children as should die in the life of the daughter; he gave the other moiety to his son for life, with remainder to his children; but if his son died without issue him surviving, he gave the last-mentioned moiety to the children of the daughter, "in such shares and proportions and in such manner as was thereinbefore directed and appointed for the payment and division of their shares in the other moiety;" the son died without issue. Held, that the daughter took a life interest in the second moiety by implication. *Davies* v. *Hopkins.* vol. 2, p. 267
2. A testator gave life interests in real and personal estate to *A.* and *B.*, with interests to their issue male in certain events only, and the estate was given over to the heir of the testator on a general failure of issue male of *A.* and *B.* Held, that *A.* and *B.* took estates tail by implication. *Franks* v. *Price.* vol. 3, p. 182
3. By a codicil, a testator gave to *A. B.* "500*l.*, in addition to 1,500*l.* which he had before bequeathed to him." The testator had previously bequeathed two legacies only of 500*l.* and 500*l.* each. Held, that by implication, the legatee was entitled to 2,000*l.* *Jordan* v. *Fortescue.* vol. 10, p. 259
4. By a marriage settlement, a fund was limited to the husband for life, with remainder to his wife absolutely if she survived; but if she predeceased him, then for all the children of the marriage in such shares as she should appoint; and if there should be no issue of the marriage living at her death, upon trust as she should appoint generally, and, in default, to the husband absolutely, but there was no express gift to the children in default of appointment. The husband survived, and there were children living. Held, that such children, notwithstanding the mother never appointed, were entitled to the fund. *Fenwick* v. *Greenwell.* vol. 10, p. 412
5. Pecuniary legacies were severally given to *A.*, *B.*, *C.*, and *D.*, "during their natural lives;" and in case of the demise of any of them "without legitimate issue," his proportion was to be divided amongst the survivors. *A.* died, leaving children. Held, that they did not take by implication, but that on *A.*'s death, his legacy fell into the residue. *Ranelagh* v. *Ranelagh.* vol. 12, p. 200
6. Bequest of residue to *John L.*, but if he should die in the lifetime of the testatrix, without leaving children, then to *Charles L.* Held that the children of *John L.* took nothing by implication. *Addison* v. *Busk.* vol. 14, p. 459
7. In such a case, the same words receive the same construction in the case of a residue, as in that of a mere legacy. *Ibid.*
8. Bequest of personal estate, after the death of the tenant for life, in trust to pay equally between *A.* and *B.* But if "neither" should be then living, to *C.* *A.* died in the lifetime of the testatrix. *B.* survived the tenant for life, and claimed the whole, either as surviving joint tenant or under a gift to her by implication. The Court rejected such claim, and held, that the moiety intended for *A.* had lapsed, and belonged to the next of kin of the testatrix. *Baxter* v. *Losh.* vol. 14, p. 612
9. The testator devised freehold and other property to *E. N.* for life, and at her decease, he gave the same, together with his copyhold and leasehold property, "situate at *C.*, in the parish of *S. N.*," to *J. N. A.* Held, that *J. N. A.* took no estate or interest in the copyhold or leasehold property till the death of *E. N.*, but that it passed to the heir at law in the meantime; and that the bequest of the leaseholds did not include other leaseholds of the testator in the parish of *S. N.*

but at some distance from *C.* *Attwater* v. *Attwater.* vol. 18, p. 330

10. A testator having three species of property, viz., his own property, property derived from his wife, and a reversion in 10,000*l.* consols, bequeathed his own property to his two sisters with benefit of survivorship, his wife's property to his cousin *Margaret*, and he proceeded thus: —"In case of the death of the above three females, the interest to be divided amongst my cousins [naming four] for their lives," and the property, including the 10,000*l.* trust money, "to devolve" to the children of *three* of those cousins [naming them] in equal proportions. Held, that *Margaret* was not, by implication or otherwise, entitled to more than the wife's property. Held, also, that the four cousins took life interests in the trust fund, as tenants in common, and that on the deaths of each, their shares, then set free, went over to the children of the three cousins *per capita* and not *per stirpes.* *Swan* v. *Holmes.* vol. 19, p. 471

11. On the marriage of a female infant, a settlement of her personal estate was executed, giving an interest to the issue in the event of the husband surviving his wife, but none in the contrary event. Held, that the issue could not on the latter event take by implication or construction. *Pringle* v. *Pringle.* vol. 22, p. 631

12. A testator bequeathed life annuities payable from his death, and he directed a fund to be set apart to secure them. He also gave one-half of the residue of his personal estate to his widow absolutely, and the other half to other parties for life with remainder over. By a codicil he postponed the payment of the annuities until the death of the wife. Held, that she did not by implication take the intermediate dividends of the fund set apart to answer the annuities. *Cranley* v. *Dixon.* vol. 23, p. 512

13. Bequest to *A.* for life, and in case he should die without child or children, then to *B.* Held, that the children took nothing by implication. *Sparks* v. *Restall.* vol. 24, p. 218

14. A bequest to *A.* for life, with a gift over, if he die without leaving issue, gives no interest by implication to the issue. *Neighbour* v. *Thurlow.* vol. 28, p. 33

15. A testator gave his real and personal estate to his daughter *Eliza* for life, with remainder to his other children, &c., but he directed that no division of the property should be made until the decease of his daughter and her husband, and of the survivor of them. Held, that the husband took no interest by implication. *Barnet* v. *Barnet.* vol. 29, p. 239

IMPROVEMENTS.

[*See* LANDLORD AND TENANT.]

1. A lessee of charitable property obtained a further reversionary term, and afterwards made considerable lasting improvements on the property; the reversionary lease being set aside, the Court considered the lessee entitled to compensation for money laid out by him in reference to the extended enjoyment. *Attorney-General* v. *Kerr.* vol. 2, p. 420

2. On setting aside an alienation of charity property, an allowance for permanent improvements cannot be made unless the Defendant accounts for the back rents. *Attorney-General* v. *Magdalen College.* vol. 18, p. 223

3. Account of lasting improvements allowed from the accruer of the Defendant's title, a corresponding account of rents being directed from the same period, and no costs were given. *Attorney-General* v. *Davey.* vol. 19, p. 52

4. In taking an accounts of rents with which a Defendant is charged by the decree, any allowance for lasting improvements can only be co-extensive with the period of accounting. *Attorney-General* v. *The Earl of Craven.* vol. 29, p. 392

INCLOSURE.

1. The right to the tithes of an allotment generally follows the right to the old tenement, in respect of which the allotment is made. *Blachford* v. *Kirkpatrick.* vol. 6, p. 232

2. An Inclosure Act directed allotments for public and specific purposes, and that one-fifth should be allotted to the lord of the manor for his interest in the "soil," and that the remainder of the common lands should be divided amongst the commoners, to be held in severalty. And it was declared that the lord's seignorial rights were not to be prejudiced, except the right to the "soil," and that the lord might thereafter enjoy all rents, heriots, &c., "and all mines, minerals, quarries and other royalties," and as if the act had not been passed. Held, that the lord retained his rights to the mines and minerals under the land allotted to the commoners in severalty. *Pretty* v. *Solly.* vol. 26, p. 606

3. Specific performance of a contract for sale of lands held under an Inclosure Act refused, it appearing upon the context that the right of the lord to the minerals in the allotted lands had not been affected by the act. *Ibid.*

4. Trustees had powers of sale and exchange, and they were to lay out the money in the purchase of hereditaments or in payment of mortgages, charges or incumbrances affecting the settled estates. They sold part and received 3,000*l.*, which

, they handed over to the tenant for life, who retained it in payment of expenses incurred by him in inclosures. The tenant for life died without having charged the inheritance with the outlay. Held, notwithstanding the provisions of the Inclosure Acts could not now be complied with, that the Court had power to declare that the moneys properly expended were a charge on the allotments. *Vernon* v. *Earl Manvers.* vol. 31, p. 617

INCOME.

[*See* LIFE TENANT AND REMAINDERMAN.]

1. A testator gave his real and personal estate to trustees, in trust to convert and invest, and he directed them to permit his wife to receive, "from his death, the net annual income actually produced by his trust property, howsoever constituted or invested." The testator was in partnership, the accounts of the profits of which were made up in *July* in each year, and he was entitled, at the end of each year, to be credited with interest on his capital. The testator having died in *March:* Held, that the widow was entitled to the whole profits of the business from the preceding *July*, but that she was only entitled to an apportioned share of the interest on the testator's capital, as from his death. *Ibbotson* v. *Elam.* vol. 35, p. 594
2. A sole trader, by his will, gave "the annual or other earnings, proceeds and profits to arise from his business," to one for life, with remainder over. Held, that in ascertaining these proceeds and profits, interest on his capital in his business was not to be first deducted. *Gee* v. *Liddell.* (No. 3.) vol. 35, p. 631

INCOME TAX.

1. A bill sought a discovery of the returns made by the Defendant to the Commissioners of property tax. The object of the Plaintiff being to shew that the Defendant represented that the profits of his business were less than what he had stated to the Plaintiff, who had purchased it: A demurrer was allowed. *Mitchell* v. *Koecker.* vol. 11, p. 380
2. Whether a discovery of income tax returns could, under any circumstances be compelled, *quære*. *Ibid.*
3. A purchaser paying his purchase-money, with interest into Court, is not to deduct the income tax payable on the interest. *Humble* v. *Humble.* vol. 12, p. 43
4. Gift by will of a rent-charge "clear of legacy duty and every other deduction whatsoever." Held, that it was not to be taken clear of the property or income tax. *Lethbridge* v. *Thurlow.* vol. 15, p. 334
5. Though in dealings between merchants in discounting bills and the like, and in loans made for short periods, the income tax is not deducted, yet, in a mortgage transaction, the mortgagor is entitled to deduct it. *Mosse* v. *Salt.* vol. 32, p. 269
6. A testator appointed an annuity of 500*l.* a year to his widow for life, "to be payable without any deduction whatever:" Held, that it was not given free of income tax. *Abadam* v. *Abadam.* vol. 33, p. 475

INDEMNITY.

[*See* EXECUTOR (INDEMNITY).]

1. A marriage being in contemplation, *A. B.* the intended wife, conveyed property to trustees for herself until marriage, and then for her separate use for life without power of anticipation, and subject to certain interests to her husband and children, if any, for herself. Before the marriage took effect, the trustees committed a breach of trust against which *A. B.* by her solicitor, gave an indemnity. The marriage took effect two years after the settlement, and the husband died without children. Held, that the indemnity was valid and subsisting, and that the trustees had been released from their liability. *Ghost* v. *Waller.* vol. 9, p. 497
2. *A. B.* was tenant for life of a trust fund, with a general power to appoint by will, and, in default, it was settled on the Plaintiff. *A. B.* ordered the trustees to pay over the fund to her on an indemnity, and she afterwards appointed the fund to the Plaintiff and others, who filed a bill to make the trustees liable for a breach of trust. Held, that by the appointment, the fund became assets for answering *A. B.*'s liabilities, of which the indemnity was one, and that therefore the trustees were not liable. *Williams* v. *Lomas.* vol. 16, p. 1
3. The executors of a lessee held entitled to no further indemnity against the covenants than the personal indemnity of the residuary legatees. *Dean* v. *Allen.* vol. 20, p. 1
4. *A.* and *B.*, who had been partners for some time, entered into a new partnership with *C.* At the same time *B.* took all the assets of the old firm, and covenanted to indemnify *A.* from the liabilities. The Court held, that the partnership between the three might be determined by the Court, for due cause, without setting aside the deed of indemnity, which might be the subject of another suit. *Harrison* v. *Tennant.* vol. 21, p. 482
5. Executors of the assignee of leaseholds

held, after an assignment by them, entitled to have a fund set apart for their indemnity; but refused as to valuable leaseholds at small rents, of which the testator was original lessee. *Brewer* v. *Pocock*. vol. 23, p. 310

6. Executors held entitled to no indemnity against liability in respect of shares in a banking company specifically bequeathed, the order of the Court, in an administration suit, being of itself a perfect indemnity to them. *Addams* v. *Ferick*. vol. 26, p. 384

7. The trustee indemnity clause does not exonerate a trustee from the consequences of a breach of trust. *Brumridge* v. *Brumridge*. vol. 27, p. 5

8. Where the title to a lost policy is clear, the insurance company is entitled to no indemnity where they pay the money into Court. *England* v. *Lord Tredegar*. vol. 35, p. 256

9. The right of a trustee to be indemnified out of the trust property is the first charge thereon, and it has priority to any charge created upon it by the *cestuis que trust*. And, consequently, the right of a trustee of a public company to be indemnified out of the property has priority over the debenture creditors. *Re The Exhall Coal Company (Limited). Re Bleckley*. vol. 35, p. 449

INDEPENDENT CONTRACT.

[*See* CONTRACT.]

1. By a deed, the amount due to the first mortgagee was confirmed to him by the subsequent incumbrancers, and he thereby agreed not to execute his power of sale for a limited time. Held, that a party who by his bill contested the amount so admitted to be due to the first mortgagee, could not take advantage of the stipulation in the deed not to sell within the time, and an injunction to restrain such sale was refused. *Cockell* v. *Bacon*. vol. 16, p. 158

2. An act authorized the *Shropshire Union* to lease several lines to the *North-Western*. The *Shrewsbury* entered into a contract with the *North-Western* to operate "during any such lease authorized to be granted by the said act." The *Master of the Rolls* held that the contract had no operation until all the lines had been finished; but L. J. *Turner* differed in opinion. *Shrewsbury and Birmingham Railway Company* v. *London and North-Western Railway Company*. vol. 16, p. 441

3. On a dissolution, *A.*, by deed, assigned the partnership assets to his co-partner *B.*, and covenanted for further assurance. On the other hand, *B.*, by the same deed, covenanted to indemnify *A.* against the partnership debts. Part of the assets did not pass by mere assignment. Held, by the Master of the Rolls, that *B.* could not compel *A.* to perfect the assignment, without repayment to *A.* of a partnership debt, which he had been compelled to pay, and to which *B.*'s indemnity extended. *Gibson* v. *Goldsmid*. vol. 18, p. 584

4. The owner of a plot of ground agreed to grant a lease of it to *A. B.* as soon as the latter had erected a villa thereon. But it was stipulated, that if *A. B.* should not perform the agreement on his part, the agreement for a lease was to be void, and that the owner might re-enter. *A. B.* was to insure in a particular way, and he was to have the option of purchasing the fee within two years. *A. B.* erected the villa, but insured in the wrong office and in the wrong name. Held, that the contract for a lease was independent of the option to purchase, and that notwithstanding the forfeiture of the first, the latter still subsisted, and a specific performance of the contract for sale was decreed. *Green* v. *Low*. vol. 22, p. 626

INDEPENDENT GIFT.

[*See* GIFT TO A CLASS (SUBSTITUTION).]

Gift to *A.* for life, and after her decease to her children, and in case of their death before the vesting of their shares, in trust for her next of kin. The daughter never had any children. Held, that her next of kin were nevertheless entitled. *Tennant* v. *Heathfield*. vol. 21, p. 255

INFANT.

[*See* GUARDIAN, GUARDIAN AD LITEM, INFANT (SETTLEMENT), MAINTENANCE, NEXT FRIEND, UNDUE INFLUENCE.]

1. A proposed compromise of a suit appearing to be for the benefit of an infant Defendant, the Court sanctioned it, without a reference to the Master. *Lippiat* v. *Holley*. vol. 1, p. 423

2. In order to enable an infant Defendant to enter into evidence in support of facts which would not otherwise be in issue in the cause, it is proper that they should be stated in his answer; but whatever admissions may be made or points tendered in issue in the answer of an infant, the Plaintiff is not in any degree exonerated from proving as against the infant the whole case on which he relies. *Holden* v. *Hearn*. vol. 1, p. 445

3. Minutes of decree directed conveyance to be settled by Master, "*if the parties differed*," there being an infant heir who was a party to the cause and a necessary party to the conveyance. Held, that the

words "if the parties differed" ought to be omitted, an infant being interested. *Calvert* v. *Godfrey*. vol. 2, p. 267
(But see *Richardson* v. *Ward*. vol. 11, p. 378)

4. A bill alleged that the settlor at the time of making a voluntary settlement was greatly indebted; it did not state the particulars of the debts, but referred to a schedule of the settlor in the Insolvent Court in aid of the suit. Held, that the existence of the debts was not sufficiently put in issue as against an infant, but an inquiry was directed on the point. *Townsend* v. *Westacott*. vol. 2, p. 340

5. Suit improperly instituted on behalf of an infant, dismissed with costs on motion, upon the application of the infant by *A. B.*, a person not then a party to the suit, "as her next friend, for the purpose of the application." *Guy* v. *Guy*. vol. 2, p. 460

6. Bill filed by two infants; one attained twenty-one before decree; her name as co-Plaintiff struck out on her application, with the costs of the application. *Ibid.*
(*Bicknell* v. *Bicknell*. vol. 32, p. 381)

7. The Court declined taking the consent of a married woman, who was a minor, to the payment out of Court of money to which she was entitled. *Stubbs* v. *Sargon*. vol. 2, p. 496

8. An infant *feme covert* was by her next friend, made a co-Plaintiff to a bill against her husband and others. Held, upon her coming of age and disapproving of the suit, that she was entitled to have her name struck off the record as co-Plaintiff; but the application having been made very soon after her attaining twenty-one, and it being suggested that it was made under the influence of the husband, the Court postponed making the order for a short period and ascertained from the lady herself, in the absence of her husband, her wishes on the subject. *Cooke* v. *Fryer*. vol. 4, p. 13

9. An infant having been taken out of the jurisdiction to avoid service, the Court refused to appoint the senior six clerk in Court to appear and put in his answer. *Lane* v. *Hardwicke*. vol. 5, p. 222

10. An infant having after appearance been taken out of the jurisdiction the Court appointed the senior six clerk to put in his answer, without the infant being brought into Court. *Hancock* v. *Eaton*. vol. 5, p. 223 n.

11. The Court has no authority to sell the real estate of an infant, or to convert it, upon the notion that it would be beneficial. *Calvert* v. *Godfrey*. vol. 6, p. 97

12. A trader who had freehold, copyhold, and personal estate, died in *September*, 1832, leaving an infant heir. His estate was insufficient to pay his debts and charges. His partners, however, by deed, took upon themselves to pay all the debts, and secured the principal part of his property for his family. A suit was instituted for carrying the deed into execution, and the Master found that it would be for the benefit of the infant heir, that the real estate should be sold and applied in the manner mentioned in the deed. A decree was made for sale, and the infant was declared a trustee within the 1 *Will.* 4, c. 60. Held, that a sale under the decree could not be enforced; that the Court had no jurisdiction to order the sale; and that the infant was not a trustee within the act. *Calvert* v. *Godfrey*. vol. 6, p. 97

13. An infant is entitled to treat a person who enters on his estate during his infancy as his bailiff, who is accountable as such. *Blomfield* v. *Eyre*. vol. 8, p. 250
(*Nanney* v. *William*. vol. 22, p. 452
Pascoe v. *Swann*. vol. 27, p. 508)

14. The jurisdiction which this Court has, to decree accounts of the estates of infants, against persons entering thereon during their minority, is not taken away by the fact, that at the time when the bill was filed, the infant had attained twenty-one. *Blomfield* v. *Eyre*. vol. 8, p. 250

15. Process by attachment to compel an infant to convey estates sold in a creditor's suit. *Thomas* v. *Gwynne*. vol. 8, p. 312

16. Difficulties in dealing with suits filed by strangers on behalf of infants. On the one hand you may encourage useless and expensive litigation, on the other, you may discourage interference very often necessary for their protection. *Cross* v. *Cross*. vol. 8, p. 455

17. In a case in which the defence of an infant had not been properly raised and proved, a decree was made for the Plaintiff, without prejudice to any bill to be filed by the infant within six months to establish his right. *Lane* v. *Hardwicke*. vol. 9, p. 148

18. This Court has no authority to alter the character of the property of an infant, and convert realty into personalty. *Field* v. *Moore*. vol. 19, p. 176

19. An infant, on coming of age, may ratify securities given by him during his minority, without receiving any further consideration, but he must, on the occasion, have full knowledge and complete information respecting the transaction. *Kay* v. *Smith*. vol. 21, p. 522

20. Though a person entering on the estate of an infant is treated, in equity, as his bailiff, the rule does not apply where the infant has never been in possession by himself, his guardian or agent, and where the estate has been held by a title adverse to the infant. *Crowther* v. *Crowther*. vol. 23, p. 305

21. Where debts of a testator had been paid out of the income of the estate of an

infant tenant in tail under his will, by the direction of the Court, held, that the payment, on behalf of the infant, having been made by the Court, a merger of the charge could not be presumed. *Alsop* v. *Bell.* vol. 24, p. 451

22. The Court, in sanctioning an arrangement on behalf of infants, considers not only their pecuniary interest but its effect as a family arrangement. *Micholls* v. *Corbett.* vol. 34, p. 376

23. Trustees, who had a power of sale, but no power of leasing, first granted leases and afterwards sold subject to them. Infants being interested, the Court afterwards sanctioned the sale on their behalf. Held, that the purchaser was bound to complete. *Ibid.*

24. An infant who had sold spurious articles, representing them to have been manufactured by the Plaintiff, ordered to pay the costs of suit for an injunction. *Chabb* v. *Griffiths.* vol. 35, p. 127

INFANT (SETTLEMENT).

1. On the marriage of an infant *feme*, a settlement was made of funds in Court to which she was entitled. On her attaining twenty-one, a petition was presented for payment to the trustees. Held, that the consent of the lady in Court or by commission was necessary. *Day* v. *Day.* vol. 11, p. 35

2. Effect of an agreement, on the marriage of a female infant, to settle her real estate. It would be a fraud upon the husband's contract, if he were to consent to a disposition of the estate by his wife, calculated to defeat the settlement. *Ex parte Blake, In re London Dock Company.* vol. 16, p. 461

3. The 18 & 19 *Vict.* c. 43, renders valid a post nuptial settlement of an infant's estate made with approbation of the Court. *Powell* v. *Oakley.* vol. 34, p. 575

INFORMALITY.

[*See* IRREGULARITY.]

INFORMATION.

[*See* SUIT, NOTICE, 4.]

1. In an information by the Attorney-General at the instance of a relator, the Attorney-General ought not to appear otherwise than in support of the information.

As to the position of the Attorney-General in informations at the instance of a relator, and the practice in such cases. *Attorney-General* v. *The Ironmongers' Company.* vol. 2, p. 313

2. In a charity information filed without a relator, the Attorney-General did not personally appear at the hearing, but two other counsel appeared in support of the information. Held, that the costs of a brief to the Attorney-General ought to be allowed in addition to those of the two counsel, in the taxation of costs as between party and party. *Attorney-General* v. *The Drapers' Company.* vol. 4, p. 305

3. Reference to the Attorney-General in charity cases. *Attorney-General* v. *Pretyman.* vol. 4, p. 462

4. It is irregular for the solicitors of a relator to proceed in a charity information after the death of the relator. *Attorney-General* v. *Haberdashers' Company.* vol. 15, p. 397

5. The Attorney-General and relator cannot be allowed to take opposite views on an information. *Attorney-General* v. *Sherborne Grammar School.* vol. 18, p. 256

6. The Defendants were by Act of Parliament authorized to make a short line uniting their main line with the Plaintiffs' line, but the 12th section prohibited the Defendants opening their main line until the junction should be completed. In default of the Defendants making the junction within a specified time, the Plaintiffs were authorized to make it. The Defendants proposed opening their main line before the completion of the junction. Held, that the Plaintiffs had a sufficient interest to entitle them to an injunction to prevent this proceeding, and that it was not necessary to resort to an information for that purpose, and an injunction was granted, although the delay in opening the main line might be prejudicial to the public. *The Cromford Railway Company* v. *The Stockport Railway Company.* vol. 24, p. 74

INJUNCTION.

[*See* COPYRIGHT, DELAY, INJUNCTION (COMPANY), INJUNCTION (FOREIGN COURT), INJUNCTION (OTHER COURTS), INTERPLEADER, JURISDICTION, NUISANCE, PATENT, RESTRAINT OF TRADE, TRADE MARKS, ULTRA VIRES, WASTE.]

1. Where a bill is filed by a patentee for an injunction to restrain an alleged infringement of his patent, the Plaintiff is not precluded from asking for an injunction at the hearing, by the fact of his not having applied for it on an interlocutory motion; but the not moving for the injunction imposes on the Plaintiff, in such a case, the obligation of making out a clear and unexceptionable title at the hearing; and if he fails in that, and has not previously obtained an injunction, he

will not be allowed to use the facts proved in the cause, as evidence of a *primâ facie* case, giving him a right to further time, for the purpose of enabling him to establish more satisfactorily his legal title. *Bacon* v. *Spottiswoode.* vol. 1, p. 382

2. On dismission of bill an injunction falls of course. *Green* v. *Pulsford.* vol. 2, p. 70

3. Where a partner had abstracted a partnership book from the counting house of the firm, contrary to an express covenant contained in the deed of partnership, Sir *C. C. Pepys*, Master of the Rolls, granted an injunction restraining him from continuing to violate the covenant; and this was continued by Lord *Langdale*, at the hearing of the cause, on the 28th *February*, 1838. *Taylor* v. *Davis.* vol. 3, p. 388, n. (*e*)

4. Injunction in a suit for specific performance to restrain the vendor from selling or letting refused. *Turner* v. *Wright.* vol. 4, p. 40

5. *Ex parte* injunction, obtained by suppression of material facts, dissolved. *Hilton* v. *Lord Granville.* vol. 4, p. 130

6. Where the rights of the Plaintiff and the Defendant are legal, the Plaintiff, in asking for an injunction to protect him from a violation of his alleged legal rights, ought to show that the right has been established, or that having had no means of establishing it, but the right being *primâ facie* well founded, the interference of this Court is necessary, to prevent that species and extent of mischief which this Court calls irremediable, before the right can be established by legal proceeding. *Ibid.*

7. To entitle one partner to an order for an injunction and receiver, against his copartner, he must either shew a dissolution, or facts which, if proved at the hearing, would entitle him to a decree for a dissolution. *Smith* v. *Jeyes.* vol. 4, p. 503

8. Whether where a special injunction is granted against several Defendants, one of them can move to dissolve in the absence of the rest, *quære*. *Thompson* v. *Geary.* vol. 5, p. 131

9. Injunction to restrain the breach of a farming covenant. *Fleming* v. *Snook.* vol. 5, p. 250

10. If a Plaintiff coming for an injunction to restrain the use of his trade marks appears to have been guilty of misrepresentations to the public, the Court will not interfere in the first instance. *Perry* v. *Truefitt.* vol. 6, p. 66

11. Injunction to restrain a party from making and sending to *Turkey* watches having the Plaintiff's name or the word "warranted" engraved thereon in *Turkish* characters in imitation of the Plaintiff's watches. *Gout* v. *Aleplaglu.* vol. 6, p. 69, n.

12. A motion being made for an injunction, it stood over with liberty to the Plaintiff to bring an action to establish his right. The Plaintiff neglecting to proceed therein, the motion was refused with costs. *Perry* v. *Truefitt.* vol. 6, p. 418

13. Where a Plaintiff obtains an injunction on affidavits, the Defendant is not wrong in meeting the case by affidavits on a motion to dissolve, although the point might be determined shortly by filing a demurrer. *The Barnsley Canal Company* v. *Twibell.* vol. 7, p. 31

14. Injunction granted to restrain Defendant from being concerned for any of the Plaintiff's clients contrary to his covenant. *Nicholls* v. *Stretton.* vol. 7, p. 42

15. Injunction granted, prohibitory in form, but mandatory in its effect. *Earl of Mexborough* v. *Bower.* vol. 7, p. 127

16. Tenant of a mine restrained, on motion, from permitting a communication with an adjoining mine to continue open, and water to flow through the same, the effect intended being to compel the Defendants to close the communication. *Ibid.*

17. In a patent case, a motion for an injunction was ordered to stand over for the plaintiff to bring an action to establish his right. The Plaintiff obtained a verdict, but the Defendant tendered a bill of exceptions, which could not be determined without some considerable delay. Upon the motion being renewed, the Court, under the circumstances, ordered it to stand over till the bill of exceptions had been disposed of. *Bridson* v. *M'Alpine.* vol. 8, p. 229
(*Bridson* v. *Benske.* vol. 12, p. 1)

18. Case, in which an injunction was granted though not prayed for by the bill. *Blomfield* v. *Eyre.* vol. 8, p. 250

19. After decree in a foreclosure suit, a mortgagor in possession began to commit waste; he was restrained by injunction, though no injunction was prayed by the bill. *Goodman* v. *King.* vol. 8, p. 379

20. The allowance of a demurrer to the whole bill puts an end to an injunction though liberty is given to amend. *Schneider* v. *Lizardi.* vol. 9, p. 461

21. A Plaintiff filed a bill on behalf of himself and other shareholders in a railway company, to restrain the directors committing a breach of trust. It appeared that he was suing at the instigation of another rival company. Held, that this circumstance was not, of itself, sufficient to prevent him obtaining a special injunction on the merits of his case. *Colman* v. *The Eastern Counties Railway Company.* vol. 10, p. 1

22. Injunction to restrain the erection of gas works in the vicinity of the Plaintiff's residence refused, it being uncertain, whether, upon the completion of the

works, the manufacture of gas would prove a nuisance. *Haines* v. *Taylor*. vol. 10, p. 75

23. Where a work is going on, which, though not in itself a nuisance, will manifestly end in operations presenting such a nuisance as this Court restrains, this Court will interfere at once. *Ibid.*

24. An injunction was obtained before answer. The Defendant filed his answer, but delayed moving to dissolve until several months after replication, and at a period when the evidence would have been published, but for the Defendant having obtained an enlargement of the publication. The motion was on that ground refused. *Feistel* v. *King's College, Cambridge*. vol. 10, p. 491

25. The provisional directors of a joint stock company, having without the authority of the Plaintiff, published a prospectus, stating him to be a trustee of the company, were restrained by injunction. *Routh* v. *Webster*. vol. 10, p. 561

26. The Court will not interfere by injunction to prevent the publication of a libel. *Clark* v. *Freeman*. vol. 11, p. 112

27. Injunction to prevent a chemist from selling a quack medicine. under a false and colourable representation that it was a medicine of the Plaintiff, an eminent physician, refused. *Ibid.*

28. By the terms of an injunction *A. B.* was restrained, but it did not extend to "his servants and agents." A motion to commit his agent *C. D.* for breach of the injunction held irregular; but, *semble*, that he might be proceeded against for "a contempt," if he knowingly aided and assisted *A. B.* in breach of the injunction. *Lord Wellesley* v. *The Earl of Mornington*. vol. 11, p. 180

29. An injunction was granted against *A.* restraining him (but not expressing his servants and agents) from cutting timber. *B.*, who was *A.*'s agent, with knowledge of the injunction, cut the timber. Held, that *B.* might be committed for the contempt, though not for breach of the injunction. *Ibid.* p. 181

30. An order for an injunction to restrain commissioners under a local drainage act from signing their final award, and from proceeding to enforce payment of rates, although the act gave jurisdiction to the quarter sessions, affirmed on appeal; but the Lord Chancellor attached to it the condition of bringing the money into Court. *Armitstead* v. *Durham*. vol. 11, p. 556

31. Where a bill is filed by some "on behalf, &c." an injunction which restrains proceedings against persons not named parties to the record, is irregular. *Ibid.*

32. By consent an injunction was made perpetual upon motion. *Morell* v. *Pearson*. vol. 12, p. 284

33. On an application for an injunction to restrain an alleged irreparable injury, by taking away stones from the sea shore, the Court, considering that the Plaintiff was most likely to suffer by its non-interference, granted the injunction; and although the Plaintiff's title was purely legal, and was not clearly made out, it refused to put him on the terms of bringing an action to try it, but merely gave him liberty so to do. *Clowes* v. *Beck*. vol. 13, p. 347

34. A contract was entered into between a canal company and the Plaintiffs, the owners of paper mills, as to the mode of enjoyment of the waters by which both were supplied. The company did acts in violation of the contract. Held, that it was no answer, upon a bill for a perpetual injunction, to say, that the acts proposed would not be injurious or even to prove that they were beneficial to the Plaintiffs; and the Court, although no evidence was given of any actual damage done, made a decree for a perpetual injunction. *Dickenson* v. *Grand Junction Canal Company*. vol. 15, p. 260

35. A puisné incumbrancer offered to pay off the first mortgagee, which, being declined, he filed a bill to compel a transfer. The first mortgagee having afterwards proceeded to sell the property, was restrained from transferring the first mortgage and parting with the legal estate and title deeds. *Rhodes* v. *Buckland*. vol. 16, p. 212

36. A Plaintiff applying for an injunction should fairly state his case, both where the application is *ex parte*, and where on notice the opponent does not appear; but the Court does not hold him so strictly in the latter case as in the former. *Maclaren* v. *Stainton*. vol. 16, p. 279

37. On an application for an *ex parte* injunction, a Plaintiff omitted to state a material fact. A motion being made to dissolve it, the Plaintiff swore that he had forgotten the circumstance. Held, that it was no excuse for the suppression. *Clifton* v. *Robinson*. vol. 16, p. 355

38. On the principle of protecting property pending litigation, the Court will, in a suit to impeach a conveyance of an advowson, restrain the institution of a clerk, even as against a Defendant claiming to be purchaser for valuable consideration without notice under it. *Greenslade* v. *Dare*. vol. 17, p. 502

39. Application for leave to serve a notice of motion for an injunction, prior to the bill being filed, refused, the Court declining to do more than give leave to serve the notice of motion with the copy of the bill. *Simmons* v. *Heaviside*. vol. 22, p. 412

40. *A.* engaged, upon property being conveyed to him, that a certain trade should not be carried on upon it. *A.*'s tenant carried on such trade. Upon a bill against *A.* alone, for an injunction, he insisted on his right to carry on the trade. The Court granted a perpetual injunction against *A.*, his servants and agents, but declined extending it to his tenants. *Hodson* v. *Coppard.*
vol. 29, p. 4

41. A telegraph company, without any parliamentary powers, laid down their wires in tubes under a public highway. An information and bill was filed complaining of those acts as a nuisance to the public and as an invasion of the rights of the owner of the adjacent land in the soil of the road. The Court refused to grant an injunction until the legal right had been established. *The Attorney-General* v. *The United Kingdom Electric Telegraph Company, Limited.*
vol. 30, p. 287

42. The Plaintiff, the manager of a *London* theatre, engaged the Defendant, a provincial actor desirous of appearing on the *London* stage, for two years. Though there was nothing expressed on the subject, the Court inferred an engagement on the part of the Plaintiff to employ the Defendant for a reasonable time, and on the part of the Defendant not to perform elsewhere. The Plaintiff having (under these circumstances) delayed the Defendant's appearance for five months, the Defendant broke his engagement and went to another theatre. Held, that he had a right so to do, and that the Plaintiff was not entitled to an interlocutory injunction to prevent his performing there. *Fechter* v. *Montgomery.*
vol. 33, p. 22

43. The Plaintiff obtained a judgment against a tenant for life in remainder, whose estate was liable to forfeiture by his non-user of the name and arms of the testator. Upon a bill to realize the charge, the Court, at the hearing, refused to grant an injunction to restrain the tenant for life from forfeiting his life estate. *Semple* v. *Holland.* vol. 33, p. 94

44. Application by "*The Colonial Life Assurance Company*" for an injunction to restrain another company (lately established) from using the style of "*The Home and Colonial Assurance Company, Limited,*" refused. *The Colonial Life Assurance Company* v. *The Home and Colonial Assurance Company, Limited.*
vol. 33, p. 548

INJUNCTION (COMPANY).

[*See* COMPANY, ULTRA VIRES.]

After the expiration of the time for completing a railway, which by the act the company were "required" to make, a bill was filed by a shareholder seeking to restrain the company from making any dividend, until the whole of the works had been completed. A general demurrer was allowed, on the ground that the non-completion being a public wrong, the Court had not jurisdiction to interfere, and that the misapplication of the income was the subject of internal regulation. *Brown* v. *Monmouthshire Railway.*
vol. 13, p. 32

2. This Court does not attempt to direct the performance of all the duties which the governing bodies of such companies owe to the shareholders; but, on the contrary, leaves to the companies themselves the enforcement of all the duties arising out of matters which are the subject of internal management. *Ibid.*

3. It cannot be safely said, that in no case whatever joint stock companies ought to be allowed to divide any profits or receive any tolls, until all their works have been completed. *Ibid.*

4. In a railway company there were two classes of shareholders. A general meeting authorised the directors to apply to Parliament for an act which would very materially alter the existing rights and interests of the two classes *inter se.* Held, that such an application was not a breach of trust or duty, and that to hold otherwise would be applying too strictly to a railway company the principles admitted to be applicable to private partnerships, resting on private contracts unconnected with public duties and interests, and capable of dissolution. *Stevens* v. *The South Devon Railway Company.*
vol. 13, p. 48

5. Upon the application of a shareholder of one of such two classes, for an injunction to restrain the application to Parliament, and the use of the corporate seal and the application of the corporate funds for that purpose, the Court refused to restrain the application to Parliament, or the use of the corporate seal for that purpose, but restrained the application of the funds and moneys of the company towards the payment of the costs. *Ibid.*

6. By Act of Parliament, railway *A.* was authorised to transfer a portion of the line to a railway *B.*, with power for railway *B.* to raise new shares to complete it; and it was provided, that, if, after transfer, the transferred line should not be completed within three years, it should not be lawful for railway *B.* to pay any dividend until the whole railway should be opened. The three years having expired, held that railway *B.* could pay no further dividends even to its original shareholders until the branch had been completed, and they were restrained by injunction in a suit by one shareholder

suing on behalf, &c. *Carlisle* v. *The South-Eastern Railway Company.* vol. 13, p. 295

INJUNCTION (FOREIGN COURTS).

1. An injunction granted, on terms, to stay the proceedings instituted in *Demerara* to recover real estate there, and an order made for a consignee and manager of the estate and produce; it appearing to the Court that there were many other questions between the parties connected with the estate, which could be more conveniently determined together in this country. *Bunbury* v. *Bunbury.* vol. 1, p. 318

2. After decree the Court has jurisdiction, at the instance of a Defendant, to enjoin the Plaintiff from proceeding in another court in respect of the same matter.

After decree here, the Plaintiff cannot, except by leave of the Court, proceed in another court in respect of the same matter, even though such proceedings are merely auxiliary. *Wedderburn* v. *Wedderburn.* vol. 2, p. 208

3. In *April*, 1843, a creditor obtained a judgment at law by default against an executrix. A decree in a creditor's suit was obtained in *April*, 1844, and on the 25th of *May* following, the judgment at law was set aside on the terms of the executrix pleading *plene administravit*. On the 3rd of *June*, on the eve of trial, the executrix moved for an injunction, which the Court granted to stay execution only, and afterwards refused to permit the creditor to proceed against the executrix for the purpose of charging her personally. *Kirby* v. *Barton.* vol. 8, p. 45

4. After a decree for administration, a Scotch corporation, trading in *England*, and having warehouses and assets there, proceeded in *Scotland* against the testator's Scotch assets. Held, that this Court had jurisdiction to restrain them, and that the case was a proper one for its interference. *Maclaren* v. *Stainton.* vol. 16, p. 279

5. After a decree in *England* for the administration of an English testator's estate, a Scotch company, whose *situs* was in *Scotland*, but which had agents and houses of business in *England*, commenced proceedings against the representatives in *Scotland*, where the testator possessed real and personal estate, to recover a debt. An injunction was granted to restrain the proceedings in *Scotland*, but which on appeal was discharged by the House of Lords. After this, the company commenced another action in *Scotland*, and a motion was made to restrain it, on the ground of the company having come in and adopted the proceedings in *England*. The application was refused by the Master of the Rolls, and by the full Court of Appeal. *Stainton* v. *The Carron Company.* vol. 21, p. 152

INJUNCTION (OTHER COURTS).

1. Pending a suit for the establishment of a will of real estate, the heir at law, who had concurred in the will and in the establishment of the suit, having commenced actions of ejectment and detinue, to recover the estate and the title deeds, the Court, on the application of the trustee, referred it to the Master, to inquire what proceedings ought to be taken to defend the actions, and restrained the actions in the meantime.

Under special circumstances, an injunction was granted on the application of a Defendant against a co-Defendant. *Edgecumbe* v. *Carpenter.* vol. 1, p. 171

2. The affidavit in support of a motion to extend the common injunction stated, on belief, that the answer would contain a discovery which, with other evidence, would enable the Defendant at law to make a good defence to the action, "or tend materially to reduce the amount of damages sought to be recovered thereby." Held, that this was sufficient. *Barker* v. *Barr.* vol. 1, p. 374

3. A bill of costs having been incurred by *A.* and *B.* jointly, and an action having been brought against them for the recovery of the amount, the Court refused to direct a taxation and to stay the proceedings at law, on the undertaking of *A.* alone to pay what might be found due. *In re Chilcote.* vol. 1, p. 421

4. Under the old practice, the common injunction, when obtained, might be dissolved, unless cause was shown on exceptions to answer or on the merits.

(See *Howes* v. *Howes.* vol. 1, p. 197
Stanley v. *Bond.* vol. 5, p. 175
Parker v. *Bult.* vol. 4, p. 395
Hughes v. *Thomas.* vol. 7, p. 584
Goddard v. *Smith.* vol. 8, p. 41
Gibson v. *Chayters.* vol. 8, p. 167
Langford v. *May.* vol. 16, p. 32)

5. Under the old practice, the Defendant's answer was his only defence, and was unanswerable evidence on the motion for the common injunction.

(See *Thompson* v. *Byrom.* vol. 2, p. 15
Ord v. *White.* vol. 3, p. 357
Lloyd v. *Jenkins.* vol. 4, p. 230
Madan v. *Vewers.* vol. 5, p. 503
Money v. *Jordan.* vol. 13, p. 229
And, for exceptions to this rule, see
Gardner v. *M'Cutcheon.* vol. 4, p. 534
Custance v. *Cunningham.* vol. 13, p. 363
Zulueta v. *Vinent.* vol. 14, p. 2)

6. A bill stated, that judgment had been

obtained at law, and prayed an injunction to stay execution; the court of law afterwards set aside the judgment, and let in the Defendant at law to plead; a motion being made to extend the common injunction to stay trial was, under these circumstances, refused. *Thompson* v. *Byrom.* vol. 2, p. 15

7. It is not necessary that the common injunction for want of appearance should be obtained in term or during the seal, it may be regularly obtained any day on which the Court is sitting. *The Earl of Chesterfield* v. *Bond.* vol. 2, p. 263

8. A creditor in an administration suit and a purchaser under the court restrained from enforcing his rights by a common law action. *Oldfield* v. *Cobbett.* vol. 5, p. 132 (*Stubbs* v. *Sargon.* vol. 4, p. 90)

9. The common injunction to stay trial will not be extended, if it appears from the pleadings, contrary to the usual affidavit, that the discovery will not assist the Defendant at law in his defence to the action. *Ashby* v. *Jackson.* vol. 6, p. 336

10. The Plaintiff having obtained the common injunction upon the allowance of exceptions for insufficiency, procured an order to amend without prejudice to the injunction, undertaking to amend within a week, and that the Defendant might answer the exceptions and amendments together. The amendments having been made accordingly, the Court extended the common injunction to stay trial. *Archer* v. *Hudson.* vol. 6, p. 474

11. Upon an injunction to restrain an action at law, on the ground both of legal and equitable fraud, the Court, admitting its jurisdiction to determine the legal fraud, permitted the action to proceed, in order to determine the question of legal fraud, and restrained execution only, with liberty to apply. The jury having found that there was no legal fraud, this Court afterwards entered into the consideration of the question of equitable fraud, and finding none to exist, permitted execution to be taken out. *Clarke* v. *Manning.* vol. 7, p. 162

12. The common injunction against several Defendants might be dissolved as to some, before all have answered, and the proper course of proceeding for that purpose was, for those who have answered to obtain an order *nisi*, as of course. *Lewis* v. *Smith.* vol. 7, p. 470

13. Upon a motion, made on the last seal after *Trinity* term, for an order absolute to dissolve the common injunction, the Plaintiff will not be allowed until the next motion day to shew cause on the merits; but the Court will appoint an early day in the vacation for that purpose. *Stagg* v. *Brown.* vol. 7, p. 513

14. An equitable tenant for life being in possession of the estate, he and his lessee had committed waste and refused to permit the trustee to examine the condition of the land. The trustee having brought ejectment, the Court, under the circumstances, refused to continue an injunction to restrain the action, even on the Plaintiff undertaking to cut no more timber, and to permit the inspection. *Pugh* v. *Vaughan.* vol. 12, p. 517

15. A motion being made to dissolve, it appeared that the Plaintiff had not been able to procure an office copy of the answer. Time was given him to elect whether he would shew exceptions or merits as cause. *Byng* v. *Clark.* vol. 12, p. 536

16. Where there has been great delay, the Court will not, on the eve of trial, extend the common injunction. *Bewley* v. *Hancock.* vol. 13, p. 75

17. Where the common injunction is dissolved with respect to two out of three Plaintiffs at law, it is a contempt of Court for the three afterwards to go on with the action. *Money* v. *Jordan.* vol. 13, p. 229

18. The Plaintiff had obtained the common injunction; the answer was filed on the 28th of *July*, and the last seal was on the 31st. The Court would not *ex parte* grant an order *nisi* to shew cause on the 31st; but gave leave to make a special motion on that day. *The Patent Fuel Company* v. *Walstab.* vol. 14, p. 219

19. A *primâ facie* case, supported by affidavit, is now required to entitle a Plaintiff to the common injunction; and although that case be met by the affidavit of the Defendant, denying the equity of the bill, still the Plaintiff is entitled to an injunction to stay proceedings at law until answer, in order to secure him the benefit of a full discovery, in aid of his defence at law. *Senior* v. *Pritchard.* vol. 16, p. 473

20. Modern practice in cases of injunctions to stay proceedings at law. *Lovell* v. *Galloway.* vol. 17, p. 1

21. Where the Plaintiff in a bill of discovery in aid of a defence at law has a *bonâ fide* case, verified by affidavit, shewing that information may be given by the answer which may assist him in wholly or partly destroying the case made against him at law, he is entitled to that discovery and to an injunction until the discovery is given. *Ibid.*

22. Where an estate is administered, and the residue is paid over under an order of the Court, the executor will be protected and a creditor will not afterwards be allowed to sue him at law. *Dean* v. *Allen.* vol. 20, p. 1

23. The Plaintiff, before filing interro-

gatories, moved for an injunction to stay proceedings at law. The Defendant filed an affidavit displacing the grounds of defence at law. The injunction was refused. *Chilton* v. *Campbell.*
vol. 20, p. 531

24. The Plaintiff instituted a creditors' suit against the executor. The estate was accordingly administered, and a decree was made on further directions. The executor afterwards brought actions against the Plaintiff, for debts alleged to be due from him to the testator, which the Court restrained by injunction. The Plaintiff having died, the Defendant moved, that the suit might be revived by his representatives, or in default, that the injunctions might be dissolved. The proceeding was held irregular, and the motion was refused with costs. *Oldfield* v. *Cobbett.* vol. 20, p. 563

25. Plaintiff relieved from a judgment at law given by consent, as the price of an injunction in equity, the point in issue having turned out to be legal and not equitable. *Hooper* v. *Cooke.*
vol. 20, p. 639

26. To entitle a plaintiff to an injunction to restrain proceedings at law, he must himself verify the allegations in his bill, and shew, by affidavit, that the discovery required is material. *Mollett* v. *Enequist.*
vol. 25, p. 609

27. As to the right of a Plaintiff in a bill of discovery, in aid of an action at law, to an injunction to restrain the action until full discovery is given: *Semble*, that a *primâ facie* case must be shewn, and that the Court will not allow a contest on affidavit on a motion for such an injunction. *Harris* v. *Collett.*
vol. 26, p. 222

28. An injunction was granted to stay an action at law until answer. The Defendant having put in a full answer, gave notice of motion to dissolve, after which, the Plaintiff amended his bill. The answer shewing a mere legal question: Held, that the injunction must be dissolved, and that the Plaintiff was not, on this occasion, entitled to have it continued on the case alleged by the amendments. *Mollett* v. *Enequist.* (No. 2.)
vol. 26, p. 466

INQUIRIES.

[*See* DECREE, INQUIRIES (EVIDENCE), PRELIMINARY INQUIRIES.]

1. Where the Plaintiff failed in proving, at the hearing, a fact which was the very foundation of his title: Held, that it was not the proper subject for an inquiry before the Master; and the bill was dismissed with costs, with liberty to file a new bill. *Holden* v. *Hearn.* vol. 1, p. 445

2. An executor, who was under an obligation to deliver a book to a purchaser under the Court, made an affidavit that it was lost. Held, that the purchaser was not bound by that affidavit, but was entitled to an enquiry before the Master. *Stubbs* v. *Sargon.* vol. 4, p. 90

3. The fact that the Plaintiff had filed a bill in this Court being relied on by the Defendant as having worked a forfeiture of his interest. Held, that the mere production of the office copy was not sufficient evidence, there being no proof of identity; and, secondly, that the Defendant was not entitled to an inquiry on the point. *Williams* v. *Knipe.*
vol. 5, p. 273

4. Where, in an administration suit, it is referred to the Master to take an account of the debts, &c., and claims are made against the estate of such a nature that the Master cannot conveniently dispose of them, application must be made to the Court, which will either give special directions to the Master to proceed, or direct a suit, action, or such other proceeding as the exigency of the case may require. *Lockhart* v. *Hardy.*
vol. 5, p. 305

5. An allegation in the bill was admitted by one Defendant, *A.*, and denied by another, *B.*, and the Plaintiff who had not proved it, proposed to waive his claim in respect of it, but this being opposed by *A.*, an inquiry was directed as to the fact. *Crow* v. *Carleton.* vol. 5, p. 521

6. On a bill for a partition, when there is a small failure in proof of title, or when the shares of the parties are alone doubtful, the Court will grant an inquiry; but where there is a material omission in the proof of the Plaintiff's title, the bill will be dismissed with costs. This course was pursued, though the Plaintiff had recovered in ejectment a portion of the estate from the Defendant, it not appearing what were the circumstances of that proceeding, or whether the Plaintiff's title, as alleged, was therein proved. *Jope* v. *Morshead.* vol. 6, p. 213

7. Authority given to the Master to report specially, if, from lapse of time, the death of parties, the loss of evidence, or other circumstances, he should find himself unable to proceed. *Kirkman* v. *Booth.*
vol. 11, p. 273

8. On a cause coming on for further consideration, the Defendant, who was entitled to a moiety, insisted that she was purchaser for valuable consideration of the other moiety. Held, that, although no such point had been raised by her answer, she was still entitled to make it available, and an inquiry was directed. *Lyne* v. *Lyne.* vol. 21, p. 318

INQUIRIES (EVIDENCE ON).

1. Witnesses having been examined *viva voce* in the Master's office, it was held irregular afterwards to receive their affidavits in evidence. *Hopkinson* v. *Roe.* vol. 1, p. 182
2. Where a matter is referred back to the Master, he is at liberty, without special order, to receive further evidence thereon. *Cottrell* v. *Watkins.* vol. 1, p. 366
3. When debts are under consideration of the Master, and established before him, the costs of proof may be added to the debts, and included in the report. It is not, however, applicable to cases in which either the Master has reported upon the debts, or the proceedings are in such a state that he cannot open them for the purpose of adding the costs to the debt. *Read* v. *Smith.* vol. 4, p. 521
4. A creditor against two estates for the same debt, is entitled to receive dividends on the full amount from both estates, until he has been satisfied his debt. *Bonser* v. *Cox.* vol. 6, p. 84
5. A witness was examined for the Plaintiff and cross-examined by the Defendant on other matters. Held, that his further evidence on behalf of the Defendant could not be received, upon an inquiry before the Master, except by order of the Court. *England* v. *Downs.* vol. 6, p. 281
6. The answer of a Co-defendant cannot be received in evidence on an inquiry before the Master. *Meyer* v. *Montriou.* vol. 9, p. 521
7. After a long delay the Court requires more than the ordinary proof of a debt in the Master's office. *Hartwell* v. *Colvin.* vol. 16, p. 140
8. In 1817 a trust deed was executed by *A. B.* for the benefit of his creditors. The deed was established by the decree of 1842, and an account of debts was directed. The Petitioner, in 1846, came in under the decree, and claimed in respect of promissory notes dated in 1816, given by *A. B.* to his father, who died in 1828. He produced the notes and proved the signatures, but gave no proof of the consideration, or of anything being then due. Held, that his claim had been properly rejected by the Master, for after the great lapse of time the notes could not be admitted upon the ordinary proof. *Ibid.*
9. Observations as to the danger of allowing a party to mend his case, upon a reference back to Chambers, after it has been brought before the Court, and the exact point in which the evidence is thought to be defective is known. *Basham* v. *Smith.* vol. 22, p. 190

INSOLVENCY.

1. In *May*, 1819, a party took the benefit of the Insolvent Act then in force; he subsequently acquired property, and died leaving more than sufficient to pay his debts contracted after his insolvency. The schedule creditors remaining unpaid: Held, that a bill might be maintained by one of such creditors against the personal representatives of the insolvent, without the previous sanction of the Insolvent Debtors' Court, for payment, out of the surplus assets, of the scheduled debts. *Ward* v. *Painter.* vol. 2, p. 85
2. The forty-seventh section of the Insolvent Debtors' Act (1 & 2 *Vict.* c. 110) is directory only. So that although the assignee does not strictly comply with the manner, &c. of selling real estate, as directed by the creditors, the contract is not void: *Wright* v. *Maunder.* vol. 4, p. 512
3. Articles were executed previous to a marriage by which the husband and wife agreed, that all property, estate, and effects to which the husband or wife might thereafter become entitled, should be settled to such uses as the wife should appoint; and in default, on trusts for the husband, wife and children. At the time, neither husband nor wife had any property, the husband was insolvent, and soon after the marriage took the benefit of the Insolvent Act. Property subsequently descended on him. Held, as against his assignee, that it was bound by the articles. *Hardey* v. *Green.* vol. 12, p. 182
4. In 1829 *R. P.* took the benefit of the Insolvent Act, 7 *Geo.* 4, c. 57. He executed at the time a warrant of attorney, but no judgment was entered up; and he died in 1849, leaving subsequently acquired assets. Held, that a scheduled creditor could not maintain a suit to make the assets liable. *Thomas* v. *Pinnell.* vol. 15, p. 148
(*Re Moylan.* vol. 16, p. 220)
5. The "full discharge (of a prisoner) from custody without any adjudication" by the Court, under the provisions of the 37th sect. of 1 & 2 *Vict.* c. 110, means a discharge from prison in a complete and unconditional form. The word "full," as applied to the word "discharge," is explained by the 38th section, which shews that the insolvent may obtain a discharge from prison on bail, or upon conditions not amounting to a full discharge. *Basham* v. *Smith.* vol. 22, p. 190
6. Therefore, where a vesting order was made, and before any final order of adjudication or any further step taken, the insolvent was discharged by the detaining creditor, and no revesting order was ever made, it was held, that the discharge was a "full discharge" under the 37th section, and that after-acquired property did not pass to the provisional assignee under that insolvency. *Ibid.*

7. In bankruptcy and insolvency the assignees are the only persons who could take proceedings in respect of the estate. *Davis* v. *Snell.* vol. 28, p. 321

8. A bill alleged, that in 1848 *A. B.* executed a fraudulent assignment of his property, to defeat the Plaintiff's rights under a decree; that *A. B.* took the benefit of the Insolvent Act in 1859; that the assignee had declined to take any proceedings without an indemnity, which the Plaintiff, through poverty, was unable to give. To this bill, filed against the assignee and the trustees, to set aside the fraudulent deed, a general demurrer was allowed. *Ibid.*

9. *A. B.* was adjudged insolvent under an act of the Australian legislature, which enacts, that the personal property of insolvents shall vest in their assignees by virtue of their appointment. No assignment was executed by *A. B.* He was entitled to a share of a residue consisting of a sum of stock in the Court of Chancery in *England.* The fund was claimed by the assignees, and by the executrix of *A. B.* in *England.* Held, that the right to receive it depended on the domicile of *A. B.*; that if he were domiciled in *Australia,* his assignees were entitled to receive it; but if in *England,* his executrix was entitled. *Re Blithman.* vol. 35, p. 219

INSPECTION OF DOCUMENTS.

[*See* PRODUCTION OF DOCUMENTS.]

INSPECTION DEED.

[*See* CREDITORS' DEED.]

INSURANCE.

[*See* SHIP.]

1. A party covenanted "to do and perform all such acts, matters, and things as should be requisite for continuing and keeping on foot a policy." Held, that this covenant could not be read negatively, as if he had covenanted to do no act whereby it would become void, and, therefore, that the covenant was not broken by the suicide of the covenantor, whereby the policy became forfeited. *Dormay* v. *Borradaile.* vol. 10, p. 335

2. Where *A.* effects a policy in his own name, upon the life of *B.*, declaring he is interested in *B.*'s life, such policy, *primâ facie,* belongs to *A.*, and the mere proof that some of the premiums were paid by *B.*, does not rebut that presumption. *Triston* v. *Hardey.* vol. 14, p. 232

3. A testatrix being entitled to an annuity during the life of *B.*, effected an assurance on *B.*'s life, and bequeathed the annuity to *C.* Held, that the policy did not pass. *Hamilton* v. *Baldwin.* vol. 15, p. 232

4. In 1841 *A.* mortgaged a wharf to *B.*, and covenanted to lay out the insurance money in rebuilding the premises. A fire occurred in 1844, and *A.*, having in 1845 purchased an adjoining slip of land, laid out the money in building, partly on both parcels. In 1846, *A.* mortgaged the slip to *C.*, who had notice of the first mortgage. The claim of *B.* to have the benefit of the expenditure of the insurance money on the slip was rejected by the Court. *Harryman* v. *Collins.* vol. 18, p. 11

5. A trustee having a duty to keep up a policy, and the means of procuring funds for that purpose, can himself acquire no lien on the policy for premiums paid out of his own monies, nor can he give any lien thereon to a third party who advances money for that purpose and which is so applied. *Clack* v. *Holland.* vol. 19, p. 262

6. If a trustee has no funds properly applicable for keeping up a trust policy, he may advance or borrow money to pay the premiums, and the amount will be a lien on the policies. *Ibid.*

7. A policy was held on trust; the trustee assigned it to *A. B.* to secure some premiums. It being held that *A. B.*, under the circumstances, had no lien on the policy, it was also held, that he had obtained no priority over the *cestuis que trust* by first giving notice of the assignment to the assurance office. *Ibid.*

8. If *A.* effects a policy of assurance upon the life of *B.*, to cover a debt due to him from *B.*, or if *A.* effects a policy in the name of *B.*, in whose life he has no interest, the representatives of *B.*'s estate can have no claim upon it. *Lea* v. *Hinton.* vol. 19, p. 324

9. Where there is a presumption, from the dealings and transactions between the parties, that the policy was effected with the privity and concurrence and on account of *B.*, for the purpose of securing a debt due by *B.* to a third party for which *A.* is surety, the *onus* is thrown upon *A.* of rebutting that presumption. *Ibid.*

10. *A.* borrowed 300*l.*, and *B.*, his solicitor, joined in securing it. About the same time *B.* insured *A.*'s life in his own name, after communications with *A.* *A.* having died soon after, the policy was claimed by *B.*, who was his executor, and by the representatives of *A.* The evidence was unsatisfactory, but, from the nature of the transaction, the Court thought that the *onus* of proving his title was thrown on *B.*, and he having failed, on a *viva voce* examination, to rebut the presumption that the policy was effected to secure

the debt, the Court held, that it belonged to *A.*'s estate. *Lea* v. *Hinton.* vol. 19, p. 324

11. A tradesman insured the life of his debtor in his own name; he charged the debtor with the premiums, but they were never paid by him. On the death of the debtor, the Court held, that his representatives were entitled to the produce of the policy after payment of the debt and premiums. *Morland* v. *Isaac.* vol. 20, p. 389 (See *Tryedale* v. *Pigott* (reversed by Court of Appeal). vol. 22, p. 238)

12. There is a distinction between a policy effected to secure a debt and one to secure an annuity. *Morland* v. *Isaac.* vol. 20, p. 389

13. In the case of a *Mutual Marine Insurance Company*, where the members are numerous, the Court has jurisdiction, on a loss, to enforce contribution and payment of it, either, where the amount has already been ascertained, under the rules, by arbitration, or where it has not been so ascertained. *Taylor* v. *Dean.* vol. 22, p. 429

14. A husband, on his marriage, assigned a policy on his life to trustees as a provision for his wife, but he afterwards became unable to pay the premiums. The Court authorized the trustees to sell it and accumulate the produce. *Hill* v. *Trenery.* vol. 23, p. 16

15. A husband, by his marriage settlement, covenanted to keep up policies on his life, for the benefit of himself, wife and children. He became wholly unable to pay the premiums. The Court authorized the trustees to surrender the policies. *Beresford* v. *Beresford.* vol. 23, p. 292

16. By a policy "the stocks, funds and property" of the company were alone liable. Held, that the representatives of the insured were entitled to sue in equity to make his rights available, notwithstanding the company was being wound up. *Robson* v. *M'Creight.* vol. 25, p. 272

17. A life policy was to become void, if the assured should "commit suicide." After assigning it, he hung himself, while of unsound mind. Held, that the policy was not avoided as against the assignee. *Defaur* v. *The Professional Life Assurance Company.* vol. 25, p. 599

18. A policy was to become void in certain cases, except it "should have been legally assigned." Held, that this meant "validly and effectually assigned:—that an equitable charge, by mere deposit, came within the exception, and that notice of it to the office was unnecessary. *Ibid.*

19. Life policy obtained for fraudulent purposes declared void, and the premium already paid to the insurance office applied in payment of the costs. *The Prince of Wales Assurance Company* v. *Palmer.* vol. 25, p. 605

20. An expectant heir mortgaged his reversionary estate, and, as a further security, he covenanted to keep up policies on his life, which, on his default, the mortgagees were empowered to do, and he covenanted to pay the amount and charged it on his reversion. On setting aside the transaction for inadequacy of consideration, the mortgagees were not allowed premiums paid by them under the security. *Bromley* v. *Smith.* vol. 26, p. 644 (*Pennell* v. *Millar.* vol. 23, p. 172)

21. One of the conditions of a life policy was, that it should be void if the assured died by his own hand, except it should have been assigned to other parties, for valuable consideration, six months before his death. Held, that a letter to *A. B.* charging the policy with a floating balance due to him, and written three years previous to the death of the assured by his own hand, was within the exception. *Jones* v. *The Consolidated Investment Assurance Company.* vol. 26, p. 256

22. *A. B.* effected a policy for securing a judgment debt due from him to *C. D.* *C. D.* afterwards obtained a second judgment against *A. B.* for a second debt. *A. B.* then conveyed real estate to trustees for sale, and to pay *A. B.* two judgments. After this *C. D.* obtained a third judgment against *A. B.* *C. D.* subsequently recovered the amount of the policy, and, concealing that fact, he received the whole amount of the first two judgments from the trustees. Held, that he was entitled to retain all the moneys so received in payment of the three judgment debts, and could not be compelled, at the suit of *A. B.* or his representatives, to apply the policy money in satisfaction of the first judgment, and refund the difference between the sum paid by the trustees and the policy money. *Spalding* v. *Thompson.* vol. 26, p. 637

23. A proposal for a life policy was accepted, on behalf of a *London* assurance company, by their agent in *Australia*, who acted in the transaction through the medium of a sub-agent, and the premium was paid. It was held binding on the company, although the agent had no authority to appoint a sub-agent, and although there were some informalities, but of form only. *Rossiter* v. *The Trafalgar Life Assurance Association.* vol. 27, p. 377

24. Where *A.* pays the premiums upon a policy on his life, but the benefit of it is claimed by *B.*, the *onus* of proof lies on

the latter, even though the policy stands in his name. *Pfleger* v. *Browne.* vol. 28, p. 391

25. The bill alleged that the Plaintiff effected a life policy in the Defendant's office at an extra premium, and that by the prospectus the life might, from time to time, be re-examined, and the "society being satisfied" of the removal of the cause for charging the extra premium would reduce it. The directors having *bonâ fide* exercised their discretion, refused to reduce the premium. Held, on demurrer, that this Court could not interfere in favour of the Plaintiff, though the assured had become "thoroughly healthy and sound." *Manby* v. *The Gresham Life Assurance Society.* vol. 29, p. 439

26. The 13 & 14 *Vict.* c. 115, s. 2 (1850), prohibits assurances in friendly societies beyond 100*l.* The former acts contained no such prohibition. Held, that an assurance for 499*l.* effected subsequently (1852) in a society established under the former Friendly Societies Act, was valid. *Clayton* v. *Owen.* vol. 31, p. 285

27. Some shipowners joined in a club, and provided for the mutual insurance of their respective vessels. Held, that this was not an illegal association under the 35 *Geo.* 3, c. 63; but whether it is necessary to have a policy in such cases, *quære.* *Bromley* v. *Williams.* vol. 32, p. 177

28. By the rules of a shipping insurance club, its affairs were to be managed by the members, assisted by the treasurer and secretary, and the "finance committee" were to sign all cheques and see that the funds were duly appropriated. A ship of a member having been lost at sea, he sued seven of the members and the treasurer and secretary to obtain payment of the loss. There being no finance committee: Held, on demurrer, that these Defendants had not improperly been made parties. *Ibid.*

29. By a rule of a shipping insurance club, a fine was imposed on nonpayment of the premium for a month after it became due, and at the end of two months, he was to be deprived of the benefit of insurance until the arrears were paid. A member insured his ship, which was lost at sea after the premium became due but before the expiration of the month. Whether, on subsequently paying the premium, the member was entitled to the sum insured, *quære.* *Ibid.*

30. The deed of association of the *Waterloo Assurance Company*, which bound the policy holders, contained a power to dissolve, and thereupon the directors were to get from another company an undertaking to pay all future liabilities, and to transfer to such company so much of the funds as should be agreed on between the contracting parties as would be sufficient to enable the latter company to comply with their undertaking. Held, that the amount to be paid over was a matter of agreement between the two companies, with which the policy holders had no concern, and that a policy holder, who refused to be transferred, had no claim upon the *Waterloo Company.* *Re The Waterloo Life, &c., Assurance Company, Carr's case.* vol. 33, p. 542

31. The Defendant agreed to assign a life policy to the Plaintiff. When the policy was effected, it was agreed that the payment of one-third of the annual premiums should be deferred until the death of the person insured, and be a charge on the policy. Held, that this was an incumbrance on the policy which the Defendant was bound to discharge. *Gatayes* v. *Flather.* vol. 34, p. 387

INTEREST.

[*See* COMPOUND INTEREST, TIME OF THE ESSENCE.]

1. Under the common order for taxation, Master is not authorized to allow interest on the balances of moneys of the client from time to time in the hands of the solicitor, though such appears to have been the agreement between the parties. *Jones* v. *James.* vol. 1, p. 307

2. The Defendant wrote to his receiver and professional agent as follows:—"If you will remit the 400*l.* I can give you a note for it when you come to *London.*" The money was advanced, but no note was signed. Held, that a special contract must be inferred, and that interest was payable by the Defendant. *Rhoades* v. *Lord Selsey.* vol. 2, p. 359

3. *A. B.* on whose estate the Plaintiff had a charge for principal and interest, being desirous of paying it instead of having it raised out of the estate, was ordered to pay it into Court by a given day. He made default, and applied for an extension of the time, which was granted. Held, that the Plaintiff was not entitled to subsequent interest on the aggregate of principal and interest due, but on the principal only. *Wilkinson* v. *Charlesworth.* vol. 2, p. 470

4. Turnpike tolls are not within 3 & 4 *W.* 4, c. 27, and consequently more than six years' arrears of interest may be recovered on a mortgage of turnpike tolls, notwithstanding the forty-second section of that act. *Mellish* v. *Brooks.* vol. 3, p. 22

5. Interest on legacies is given for delay of payment. *Tucker* v. *Boswell.* vol. 5, p. 607

6. A stipulation that interest should be allowed on the capital of partners presumed under the circumstances. *Millar* v. *Craig.* vol. 6, p. 433

7. By the decree the lands of the Defendant were declared chargeable with 40*l.* a year, and the Master was directed to take an account of the arrears, and the Defendant was ordered to pay what should be found due. Held, that the Defendant was not liable to pay interest on the amount found due, such amount not being a judgment debt until the date of the Master's report. *The Attorney-General* v. *Lord Carrington.* vol. 6, p. 454

8. A party recovered payment at law, but, on equitable grounds, repayment was decreed. Held, that the Plaintiff was also entitled to interest on the amount recovered from the time of its payment. *Young* v. *Guy.* vol. 8, p. 147

9. A party was directed to pay certain costs, and make other payments, but was declared to be entitled to be indemnified out of funds in Court. Held, that he was entitled to interest at four per cent. on all sums paid for costs or otherwise. *Wainman* v. *Bowker.* vol. 8, p. 363

10. When a legacy is given by a parent to his child, interest is allowed thereon, by way of maintenance, though the day of payment has not arrived. But the rule does not apply, where the testator has, by his will, made a provision for the child's maintenance. *Donovan* v. *Needham.* vol. 9, p. 164

11. Legacy to *A.*, on condition that she gave 3,000*l.* to purchase an annuity for *B.* In consequence of a litigation between *A.* and the residuary legatees, *A.* did not, for several years, obtain possession of the legacy, which did not, in the meanwhile, make interest. Payment to *B.*, who elected to take the 3,000*l.* in lieu of the legacy, was consequently postponed. Held, that interest on the 3,000*l.* was payable by *A.* to *B.* from the end of a year after the testator's death. *The Marquis of Hertford* v. *Lord Lowther.* vol. 9, p. 266

12. Interest on a bill of costs while under taxation not allowed. *In re Smith.* vol. 9, p. 342

13. Husband and wife mortgaged their respective estates for securing the husband's debt. Both estates were sold and conveyed free from the mortgage, and in 1832 the debt was paid out of the produce of the wife's estate. In 1841 a bill was filed to have the amount recouped out of the produce of the estate of the husband which was in Court. Held, that the representative of the wife was not entitled to interest on the amount paid. *Lancaster* v. *Evors.* vol. 10, p. 266

14. A testator having an estate subject to a mortgage bearing interest at five per cent., devised it to *B.*, "he paying the mortgage thereon;" and he bequeathed 2,000*l.* to exonerate the estate. The mortgagee foreclosed, and it having been decided that the devisee was entitled to the 2,000*l.*, it was held that he was entitled to interest thereon after the rate of three, and not five, per cent. *Lockhart* v. *Hardy.* vol. 10, p. 292

15. The testator covenanted to pay a sum of money to trustees, on the trusts of his settlement. He made default. Held, that his estate was liable to pay four, and not five, per cent. interest. *Smith* v. *Copleston.* vol. 11, p. 482

16. A bill, instituted by a testator, was revived by his executors, and was afterwards dismissed with costs, to be paid by the executors, and retained out of the assets. The state of the assets required the executors to pay a considerable sum out of their own moneys. Held, that they were not entitled to interest thereon. *Lewis* v. *Lewis.* vol. 13, p. 82

17. Where the Court orders payment out of a particular fund, it is tantamount to a decision, not only that such fund is liable to make such payment, but also the interest directed to be computed thereon. *Davis* v. *Brown.* vol. 14, p. 127

18. *A. S.* the sole executrix and tenant for life died, having 12,500*l.* of the assets in her hands. Her executors admitted assets. Held, that in the absence of any further proof, they were not liable for interest. *Davenport* v. *Stafford.* vol. 14, p. 319

19. An executor may be charged, on further directions, with interest on his balances, though it be not prayed by the bill. *Hollingsworth* v. *Shakeshaft.* vol. 14, p. 492

20. Executor engaged in trade, and mixing the assets with his own at his bankers, charged with compound interest at five per cent. *Williams* v. *Powell.* vol. 15, p. 461

21. An executor and trustee who was directed to invest in government stocks of *Great Britain*, or upon real security, and accumulate the surplus, after maintaining infants, invested the estate in the foreign funds. It was held that the investment was improper, and he was charged with four per cent. with annual rests. *Knott* v. *Cottes.* vol. 16, p. 77

22. Payment of interest on a debt by surviving partners, one of whom was the executor of a deceased partner, held to have no reference to the executorial character. *Brown* v. *Gordon.* vol. 16, p. 302

23. Interest on arrears of rent and an apportionment, as between landlord and tenant, disallowed. *Peers* v. *Sneyd.* vol. 17, p. 151

24. An administrator unnecessarily retained a balance of 3,700*l.* in his hands for three years. He was charged with interest, but was allowed his costs of an administration suit. Held, also, that the pendency of a suit for administration in the Duchy Court of *Lancaster*, during the time, was no justification for the non-investment. *Holgate* v. *Haworth*.
vol. 17, p. 259

25. The testator, by his will, gave several pecuniary legacies, and directed them to be paid within three calendar months after his decease; and by a codicil, he directed that two of those legacies, consisting of 30,000*l.* each, should not be paid out of his general personal estate, but should be raised out of the rents and profits of his real estates thereby devised and of those to be purchased with his residuary personal estate; and until they should be raised and paid, the first tenant for life was not to be entitled to the whole rents and profits, but only to a fixed annual sum thereout. Held, that interest was payable on the two legacies from three months after the death of the testator. *Lord Londesborough* v. *Somerville*.
vol. 19, p. 295

26. A mortgage deed made no provision for interest, and the mortgagee agreed, upon payment of the principal sum, to reconvey. Held, that the mortgage carried no interest. *Thompson* v. *Drew*.
vol. 20, p. 49

27. Under a direction to raise 5,000*l.* for the benefit of *A.* and her issue, followed by a direction to raise and pay interest at five per cent. on that sum to *A.* during her life, with a gift over to her children of the "principal sum." Held, that interest at five per cent. was not to be charged on the estate during the whole life of *A.*, but merely until the 5,000*l.* had been raised. *Cole* v. *Lee*.
vol. 20, p. 265

28. A trust term was created for raising the sum of 10,000*l.*, with interest from the death of the tenant for life, for his younger children as he should appoint, and in default to them equally. He appointed the fund to his two younger children, in unequal proportions, after the decease of himself and of his mother. Held, that the intermediate interest, between the deaths of the tenant for life and his mother, was unappointed, and that it belonged to the two children equally, and did not pass as accessory to the capital appointed. *Watts* v. *Shrimpton*.
vol. 21, p. 97

29. An executor who had unnecessarily retained in his hands uninvested a balance of 655*l.*, for a year and a half, charged interest thereon. *Stafford* v. *Fiddon*.
vol. 23, p. 386

30. A solicitor took up his client's bills. Held that these payments could only be treated in the same light as any other ordinary cash advances made by the solicitor for the benefit of his client, and that the solicitor was not entitled to charge interest thereon. *May* v. *Biggenden*.
vol. 24, p. 207

31. *A. B.* was entitled to 7,000*l.* payable on the death of *C. D.* *A. B.* by her will bequeathed legacies payable out of the 7,000*l.* *C. D.* survived *A. B.* thirty-three years. Held, that the legacies carried interest only from the death of *C. D.*, and not from the death of the testatrix. *Earle* v. *Bellingham*. (No. 2.)
vol. 24, p. 448

32. A testator died in 1818. *A. B.*, his administrator, received assets and placed them in a bank, to an account—"*A. B.*'s trustee," and where they still remained. *A. B.* died in 1853, and a suit was instituted by the administrator *de bonis non* of the original testator against the representatives of *A. B.* and the bankers, to recover the fund. Held, also, that the representatives of *A. B.* could not be charged with interest. *Smith* v. *Acton*.
vol. 26, p. 210

33. Bequest of 1,000*l.*, the "interest" for *A.* for life, with power to dispose of the "principal" to her children by will, and if no will, then "the said legacy" to go to her children "at twenty-one years of age." *A.* died in 1840, and her only child attained twenty-one in 1858. Held, that he was entitled to the intermediate interest on the legacy. *Thruston* v. *Anstey*.
vol. 27, p. 335

34. Executor charged, on further consideration, with interest on balances retained in his hands for various periods, varying from 670 to 229 days. *Johnson* v. *Prendergast*.
vol. 28, p. 480

35. An administrator who had, without reason, sold out stock specifically bequeathed to an infant and retained the produce after an order for payment, charged with compound interest. *Walrond* v. *Walrond*.
vol. 29, p. 586

36. A mortgage deed recited an agreement to secure the money "with interest," but the proviso for redemption on a day certain, and the covenant to pay and the trusts of the produce of a sale, were restricted to the principal only. Held, that interest was payable. *Ashwell* v. *Staunton*.
vol. 30, p. 52

37. Charity legacies were given for the erection of a church, parsonage and schools, which were to be paid as soon as they might be required for those purposes, without interest in the meantime. Great delay had occurred in carrying this into effect in consequence of adverse litigation in respect to their validity. Held, that the charities were entitled to interest from the end of a year from

the testator's death. *Fisher* v. *Brierley*. (No. 3.) vol. 30, p. 268

38. A sum of 5,000*l.* was bequeathed for the stipend of a minister of a church directed to be built, as soon as a church had been erected, but without interest in the meantime. The building of the church was delayed by litigation: from what time interest became payable, *quære*. *Fisher* v. *Brierley*. (No. 3.) vols. 30, 32, pp. 268, 602

39. In an administration suit, an estate was ordered to be sold discharged of the mortgage, if the mortgagee consented. The mortgagee consented to the sale. Held, that the mortgagee was only entitled to six months' interest from the date of his consent, if paid within that time, and to interest to the day of payment if paid afterwards, out of the proceeds of the sale. *Day* v. *Day*. vol. 31, p. 270

40. A partner drew out more than he was entitled to under the partnership articles. Held, that he was not liable to be charged with interest. *Meymott* v. *Meymott*. vol. 31, p. 445

41. A bankers' account was kept at compound interest. In 1847 the customer gave the bankers a security for all moneys then due or thereafter to become due, "with interest for the same after the rate of 5*l.* for every 100*l.* by the year." In 1855 the customer assigned all his estate to trustees for the benefit of his creditors, and his banking account ceased. Held, that, under this security, the bankers were entitled to compound interest down to the date of the creditors' deed, but to simple interest only afterwards. *Crosskill* v. *Bower*. *Bower* v. *Turner*. vol. 32, p. 86

42. As to the time from which interest is chargeable against a tenant for life who commits waste. *Bagot* v. *Bagot*. *Legge* v. *Legge*. vol. 32, p. 509

43. A purchaser is liable to pay interest on his purchase-money from the time when he could prudently take possession; but held, that he could not prudently take possession at the time a good title was shewn, if he had no assurance that a person having a charge on the property would join in the conveyance. *Wells* v. *Maxwell*. (No. 2.) vol. 32, p. 550

44. Trustees, in breach of trust, lent trust money to one of them, *H. F.* and his partners in trade. *H. F.* and his partners gave their bond to *H. F.* and his cotrustees for the amount, payable with interest at five per cent. No action at law could be maintained on the bond. Held, in a suit to make the trustees liable for a breach of trust, that *H. F.* was only liable to pay four per cent. on the loss which had occurred to the trust funds. *Fletcher* v. *Green*. vol. 33, p. 426

INTERPLEADER.

1. Two parties claimed a real estate under different wills, the validity of which were in controversy. An action being brought against the tenant by one of the claimants, he filed his bill of interpleader against both claimants, and obtained an injunction on bringing his rent into Court. *Townley* v. *Deere*. vol. 3, p. 213

2. Injunction to restrain proceedings in an issue at law, directed by a judge of the Court of Queen's Bench, under the Interpleader Act. *Langton* v. *Horton*. vol. 3, p. 464

3. The Interpleader Act applies only to those cases where the opposite claims depend on legal rights, and not on matters peculiarly of equitable jurisdiction. *Ibid.*

4. Upon the death of a landlord, the tenant, in ignorance of the rights of the parties, attorned and paid rent to *A.*, who claimed as devisee. The right of *A.* to the property was afterwards disputed by *B.*, the heir. Held, that the tenant might maintain a bill of interpleader against *A.* and *B.* *Jew* v. *Wood*. vol. 3, p. 579

5. A Defendant, in an interpleading suit, may shew, at the hearing, that the case is not a proper one for interpleader. *Toulmin* v. *Reid*. vol. 14, p. 499

6. In an interpleader suit, the Court cannot make a hostile decree against the Plaintiffs beyond the subject of the suit. *Ibid.*

7. The Plaintiff in an interpleader suit disallowed the costs of proceedings taken by him in the suit subsequent to his receiving notice of the withdrawal of the adverse claims. *Symes* v. *Magnay*. vol. 20, p. 47

8. Leave to file an interpleader bill without the usual affidavits of no collusion (the Plaintiff being abroad) refused by the Master of the Rolls, but allowed by the Court of Appeal, subject to all questions. *Larabie* v. *Brown*. vol. 23, p. 607

9. An interpleader bill and an affidavit of no collusion were filed together at the Record and Writ Clerks' Office. A demurrer, on the ground that they were not annexed, was overruled. *Jones* v. *Shepherd*. vol. 29, p. 293

10. Conflicting claims were made as to a charge on the Plaintiff's estate. Held, that he might maintain a suit to have the rights determined and his estate cleared, and that he was also entitled to his costs of suit. *Vyvyan* v. *Vyvyan*. vol. 30, p. 65

11. Whether a sheriff can file a bill of interpleader in respect of goods which it is alleged he has wrongfully seized, *quære*. *Dalton* v. *Furness*. vol. 35, p. 461

12. A sheriff, who has seized goods under a *fi. fa.* issuing out of this Court, and which are claimed by a third party, cannot file a bill of interpleader until he has given notice to the judgment creditor of the adverse claims to the goods seized. *Dalton* v. *Furness.* vol. 35, p. 461

INTERROGATORIES.

[*See* WITNESS (EXAMINATION).]

1. The 17th Order of *August* 1841 does not require a number to be prefixed to each separate interrogatory, but merely that they shall be divided as conveniently as may be. *Boutcher* v. *Branscombe.* vol. 5, p. 541
2. Where the interrogatories are not properly numbered, the Court will stay proceedings until the General Order has been complied with. *Ibid.*
3. Held not irregular after amendment of bill to require the Defendants to answer all the interrogatories, without excepting those previously answered. *Bate* v. *Bate.* vol. 7, p. 528

INTERVENING.

[*See* PARTIES INTERVENING.]

1. A decree having been made for the administration of an estate, another suit was afterwards instituted against the executrix to establish an adverse claim against a portion of the assets. The executrix being abroad, and neglecting to defend the second suit, it was about to be taken *pro confesso*. The Court gave leave to the Plaintiff in the administration suit to intervene and defend the second suit on behalf of the estate, upon payment of costs and giving an indemnity. *Olding* v. *Poulter.* vol. 23, p. 143
2. Leave given to a person who was not a party to the cause, to intervene and present a petition of rehearing of an order in which he was materially interested, and which had been made upon petition in the cause. *Jopp* v. *Wood.* (No. 2.). vol. 33, p. 372

INTESTACY.

[*See* GIFT TO A CLASS, IMPLICATION (GIFT BY), LAPSE, PERIOD OF DIVISION, REFERENCE (GIFT BY), VESTING.]

1. A testator devised the residue of his real estate to a trustee, until *one* of his grandsons attained twenty-one; and in case his grandson *Thomas* attained twenty-one, in trust to pay him "the future rents." He bequeathed to the same trustee the residue of his personal estate to accumulate until *one* of his grandsons attained twenty-one; and he directed payment of "the aggregate" of the residue of his personal estate and its accumulations and the accumulations of the rents to his grandson *Thomas*, from and after his attaining twenty-one. There was an interval of three years between the eldest grandson *Thomas* attaining twenty-one. Held, that the rents during that interval were undisposed of and passed to the heir at law. *Marriott* v. *Turner.* vol. 20, p. 557
2. A testator gave one-sixth of his personal estate to *A.* for life, and afterwards to a charity. He gave four separate sixths to *B.*, *C.*, *D.* and *E.* for life, with remainder to the same charity; he gave the remaining sixth to *F.* for life; and after the death of the survivor of *A.*, *B.*, *C.*, *D.*, *E.* and *F.*, he gave the whole moneys, and all interest thereafter to become due thereon, to the same charity. *F.* died. Held, that the charity was not entitled to *F.*'s sixth until the death of the survivor of the six legatees, and that there was an intestacy as to the intermediate income. *Stevens* v. *Pyle.* vol. 28, p. 388
3. By her will, the testatrix gave her residue to *H. R.* and nine others as tenants in common, but if *H. R.* died, she gave 300*l.*, part of the residue, to his children. *H. R.* died, and the testatrix made a codicil giving his children 500*l.* out of his share of the residue, and she confirmed her will, except as to any legacy which lapsed by reason of the death of the legatees. Held, that there was an intestacy as to one-tenth of the residue beyond the 500*l.* *Re Mary Wood's Will.* vol. 29, p. 236
4. By his will, a testator said he proposed to bequeath his residue by a codicil, "or otherwise to allow the same to go to his next of kin according to the Statute for the Distribution of the Estates of Intestates." He made no codicil. Held, that he died intestate as to the residue, and that his widow took her share threof. *Ash* v. *Ash.* vol. 33, p. 187

INVESTMENT.

[*See* BREACH OF TRUST, SECURITY.]

1. A testator died in *March* 1823, and in *January* 1824 and *January* 1825 the executors and trustees deposited part of the assets in the hands of bankers, on their notes carrying interest; the bankers failed in *November* 1825, and no necessity having been shewn for such deposit, the trustees were held personally responsible for the loss. *Darke* v. *Martyn.* vol. 1, p. 525
2. An application under the 4 & 5 *W.* 4,

c. 29, to invest trust funds on Irish security refused, for though for the benefit of the tenant for life, as increasing his income it was otherwise as to those in remainder, as affording a less secure investment. *Stuart* v. *Stuart*. vol. 3, p. 430

3. A testator directed his residuary personal estate to be invested in land from time to time and at all convenient opportunities, and in the mean time to be accumulated. Held, that the tenant for life of the land was entitled to the interest of the uninvested personalty, as from a year from the testator's death. *Tucker* v. *Boswell*. vol. 5, p. 607

4. Husband and wife had a power to sell real estates, with the consent of the trustees; the moneys were, with all convenient speed, to be laid out in the purchase of other lands; and until a convenient purchase could be effected, it was made lawful for the trustees, with the consent of the husband and wife, to invest the money in government or real securities. A sale took place in 1811, and in 1816 the produce was lent by the trustees on personal security. Held, that the trustees were liable for the stock which the money would have produced in 1816. Held, also, that the trustees ought not to have consented to a sale without first providing the means of investing the purchase-money. *Watts* v. *Girdlestone*. vol. 6, p. 188

5. A trustee having trust money in his hands which he was authorized to lay out in the public funds or on real security, held to be justified, pending the necessary delay in completing a contemplated mortgage security, in investing the money in exchequer bills. *Matthews* v. *Brise*. vol. 6, p. 239

6. An executor and trustee directed to invest a legacy on mortgage, may properly appropriate one of the testator's mortgages in payment of the legacy, but he must ascertain its sufficiency. *Ames* v. *Parkinson*. vol. 7, p. 379

7. Trustees were "authorized and empowered," with the "consent and direction" of the tenant for life, to lay out the trust moneys on "leasehold hereditaments," "in some convenient place." Held, that it was imperative on the trustees, on the requisition of the tenant for life, to invest in leaseholds, and that they could not refuse to do so, on the ground of the liabilities to be incurred by them on the covenants, they having expressly contracted on the subject, but that they had a discretion to exercise as to value, title, and locality; secondly, that leasehold houses were within the power. *Beauclerk* v. *Ashburnham*. vol. 8, p. 322

8. An authority to invest trust moneys in Parliamentary stocks or funds, or on real securities, held not to authorize an investment on *London* Dock Stock Road Bonds or Sewer Bonds. *Robinson* v. *Robinson*. vol. 11, p. 371

9. Whether a trustee is justified in lending trust money on a second mortgage, without obtaining the legal estate? An estate of the value of 80,000*l*. was subject to a first mortgage of 40,000*l*. and to two others, for 11,000*l*. and 6,800*l*. and between the second and third there was a dispute as to priority. A trustee advanced 1,908*l*. trust money on the security of an assignment of an equal amount of the 6,800*l*. Held, that this was a breach of trust. *Norris* v. *Wright*. vol. 14, p. 291

10. Where upon petition under the Irish Investment Act (4 & 5 *Will*. 4, c. 29), the Court sanctioned an investment which was made without proper evidence of value, and without the consent of the necessary parties, and there was a loss, the trustees were held liable for the breach of trust. *Ibid*.

11. Under a power to invest trust money "on real securities," a trustee lent it to a railway company, on the usual assignment of the "undertaking," tolls, &c.—the principal not payable till seven years. Held, that whether real security or not, the investment was improper. *Mant* v. *Leith*. vol. 15, p. 524

12. A power to invest trust moneys on real security in *Ireland* authorizes a loan on leaseholds for lives, perpetually renewable at a head rent. *Macleod* v. *Annesley*. vol. 16, p. 600

13. The general understanding is, that a trustee should only lend to the extent of two-thirds of the value on agricultural freeholds, and to the extent of half on freehold houses. *Semble*, also, that half is the limit in the case of a leasehold renewable for ever at a large head rent. *Ibid*.

14. Trustees were empowered, with the consent of the wife, to lend the trust moneys to the husband. The wife authorized an immediate loan of part, and of the remainder at such times as the husband might require, and the husband covenanted to pay it in six months. The money was not called in, and was lost by the insolvency of the husband. Held, first, that the wife's consent could not be given prospectively; and, secondly, that the trustees were not bound to call in the money at the end of six months. *Child* v. *Child*. vol. 20, p. 50

15. A testator empowered his trustees to lend such part of the trust moneys as they should think proper to *A*. and *B*., who were respectively his son and son-in-law. Held, that this authorized a several loan to either. *Parker* v. *Bloxam*. vol. 20, p. 295

16. Three executors were authorized to lend trust moneys to *A*. One of the exe-

cutors (*C.*) employed part of the trust moneys in his business. In 1812 *A.* and *C.* entered into partnership, when *A.* took upon himself the debt and gave security for the money to the executors. The amounts, with further advances, were employed in the business, but the whole, with interest, was fully repaid. The *cestuis que trust*, after long delay, insisted that they were entitled to a share of the profits made by the employment of the trust funds in trade; but the Court held, that the transaction amounted to a loan to *A.* under the power, and dismissed the bill with costs. *Parker* v. *Bloxam*.
vol. 20, p. 295

17. Bequest to *A.* for life of an annuity of 100*l.*, "by interest arising out of money to be vested for that purpose by the executors" in public funds or other good security, and after his death, "the said capital stock so purchased" to *A.*'s children. By a codicil the testator said, "what I mean in my will by securing money in the public funds, is to purchase a capital stock" in the consols by my executors. Held, that the executors might either purchase in the consols or in other good security, but having done neither in the life of *A.*, his children were entitled to 3,333*l.* 6*s.* 8*d.* consols, and not to 2,000*l.* cash. *Aspland* v. *Watts*.
vol. 20, p. 474

18. The Plaintiff, a tenant for life, having received five per cent. on an investment, which she knew to be and insisted was improper, was ordered to account for the excess beyond four per cent. for the benefit of the trust. *Baynard* v. *Woolley*, *Wearing* v. *Baynard*.
vol. 20, p. 583
(See *Griffith* v. *Porter*. vol. 25, p. 236)

19. Bequest of consols, in trust to purchase a life annuity for a lady, to be held for her separate use without power of anticipation; and in case of her illness or incapacity, the testator gave the trustees a discretionary power as to the application of the annuity, for her maintenance, support or otherwise for her personal benefit. The legatee being unmarried, Held, that she was entitled to a transfer of the consols. *Re Browne's Will*.
vol. 27, p. 324

20. Trustees of the will of a testator, who died in 1845, had power to invest on "real securities in *England* or *Wales*, but not in *Ireland*." The Court declined advising the trustee to invest, under the powers contained in the 22nd & 23rd *Vict.* c. 35, s. 32, on a mortgage of Scotch estate. *Re Miles' Will*.
vol. 27, p. 579

21. A power to invest trust funds "upon the security of the funds of any company incorporated by act of parliament" does not warrant their investment in preference railway shares. *Harris* v. *Harris*. (No. 1.)
vol. 29, p. 107

22. A testator gave his real and personal estate to three trustees, with power, in their "absolute discretion," when they should think fit, but not otherwise, to sell, and convert and invest upon certain securities or "upon the stocks, shares, securities" of any incorporated company paying a dividend. Held, that the trustees were authorized to invest in railway stock bearing a fixed rate of interest, but that they ought not to allow part of the testator's assets to remain on shares, as invested by the testator himself, which, by the rules of the company, could only stand in the name of a single trustee. *Consterdine* v. *Consterdine*.
vol. 31, p. 330

23. A testatrix directed her executors (who were also her residuary legatees) to invest such a sum in the stocks or on freehold security as would produce 150*l.* a year, and she bequeathed the 150*l.* to *A.* for life, and after his death she gave the security on which the investment should have been made to *B.* The executors invested 3,530*l.* at four-and-a-half per cent. on a mortgage for five years of freeholds, which were let for a long term on ground rents producing 176*l.* per annum. The value of the freeholds was about 4,344*l.*, but the property on which the rents were secured was of much greater value. Held, that the investment was not improper. But held, that if the payment to the Plaintiff should be delayed, by the inability of the trustees to call in the mortgage for five years, the Plaintiff was entitled to have the mortgage sold and the deficiency paid by the executors. *Vickery* v. *Evans*.
vol. 33, p. 376

24. By an act of parliament, funds in Court were, by way of interim investment, to be laid out in "navy victualling or exchequer bills." But, under the 23 & 24 *Vict.* c. 38, and the General Orders of the 1st of *February*, 1861, the Court allowed them to be invested in consols. *Ex parte The Trustees of the Birmingham Blue-coat School*.
vol. 35, p. 345

IRREGULARITY.

[*See* SOLICITOR, TITLE OF CAUSE, WAIVER OF IRREGULARITY.]

1. Depositions suppressed on the ground of interrogatories being intituled in one cause, in which a deceased Defendant and her representatives were all stated to be Defendants together. *Pritchard* v. *Foulkes*.
vol. 2, p. 183

2. Where an irregular order has been obtained, no subsequent order to the same effect can be had until the former has been discharged. *Pearce* v. *Gray*.
vol. 4, p. 127

3. Liberty to amend was given to the Plaintiff, on the terms of his doing so within three weeks. The amendment was, however, made after the expiration of that time. The Court, though of opinion that leave ought to have been obtained to file the amended bill, refused to direct the amended bill to be taken off the file, on the ground of the conduct of the defendant, who had promised to draw up the order, but had neglected doing so, and had thereby created the delay. *Henley* v. *Stone.* vol. 4, p. 386

4. Notice of exceptions was not given until a day too late, and was intituled wrongly. The Court relieved the party from the effects of the irregularity on payment of costs. *Bradstock* v. *Whatley.* vol. 6, p. 61

5. A notice of motion and affidavit in support professed, in its title, to give the names of all the parties, but omitted one. The Court would not proceed, but gave leave to amend, and re-swear. *Davis* v. *Barrett.* vol. 7, p. 171

6. An attachment set aside, on the ground that the order on which it was founded had not been entered, through the mistake of the officer, and not through any neglect of the party. *Telson* v. *Jervis.* vol. 8, p. 364

7. In a transition case under the Orders of 1845, exceptions were filed one day too late; the Court declined to order them to be taken off the file. *Whitmore* v. *Sloane.* vol. 9, p. 1

8. Upon motion to discharge an order *nisi*, for irregularity, the Court, finding that the parties moving had not been prejudiced by the irregularity, refused to discharge it, but made the Defendant pay the costs. *Lord Suffield* v. *Bond.* vol. 10, p. 331 (*See* same case. vol. 10, p. 146)

9. An articled clerk had neglected to file the necessary affidavit within six months; but the omission "had arisen from inadvertence only." Held, that this was not a sufficient ground for relieving him from the consequences under the 6 & 7 *Vict.* c. 73, s. 9. *In re Benson.* vol. 10, p. 435

10. The Plaintiff having, by a slip, neglected to file a printed bill within fourteen days, in pursuance of his undertaking, was relieved from the consequences upon payment of the costs of the motion. *Ferrand* v. *The Corporation of Bradford.* (No. 2.) vol. 21, p. 422

11. Articles of clerkship were, by a mere slip, not filed within six months. The Court relieved the clerk from the effect of the error. *Re Follett.* vol. 30, p. 629

"ISSUE."

[*See* DEATH WITHOUT ISSUE, DYING WITHOUT ISSUE, ISSUE (GIFT TO).]

ISSUE AT LAW.

[*See* JURY, QUESTIONS OF LAW OR FACT.]

1. A bill was filed on behalf of an infant, with the sanction of the Master, to set aside deeds, executed by a lunatic after he had been found lunatic by inquisition. An issue having been directed, the jury found in favour of the deeds. The bill was dismissed with costs of suit and of the issue. *Frank* v. *Mainwaring.* vol. 4, p. 37

2. Form of issue for trying the validity of deeds, executed by a party found by inquisition to have been a lunatic from a time anterior to the execution of the deeds. *Ibid.*

3. Where on an issue the evidence is fairly before the jury, and the judge is satisfied, there is great difficulty in supporting a motion for a new trial on the ground that the verdict is not supported by the evidence; but the Court will nevertheless entertain the motion, and attend to the course of the trial, the issue having been directed for its satisfaction. *Johnston* v. *Todd.* vol. 5, p. 597

4. An heir who disputes the will, may, by long acquiescence, lose his right to have its validity tried at law, upon an issue *devisavit vel non*, and where an heir had acted as devisee in trust under the will for a great number of years, he was refused an issue even to try the question of parcels. *Man* v. *Ricketts.* vol. 7, p. 93

5. On an issue *devisavit vel non*, the jury found in favour of the will, but before the cause had been heard on the equity reserved, the devisees in trust applied for a reference, to enquire whether a contract entered into by them was beneficial. Held, that the application was premature. *Bowman* v. *Bell.* vol. 7, p. 161

6. It is an established rule, that where an issue is directed to be tried at a certain time, and, by the default of one party, unexplained, the trial is not then had, an order will be made to take the issue *pro confesso*. But under particular circumstances, the rule will not be applied, as where material witnesses were unable to attend at the trial. *Hargrave* v. *Hargrave.* vol. 8, p. 289

7. An application to stay the trial of an issue, for the purpose of obtaining further evidence, refused with costs, under the circumstances. *Hargrave* v. *Hargrave.* vol. 9, p. 163

8. Where the Plaintiff's right depends on his being heir, the Court has jurisdiction to grant an issue to try that fact on an interlocutory motion. If the facts of the case make it appear, it is not very important, whether they appear on a motion for an injunction or receiver, or upon a

direct motion for the issue. *Lancashire* v. *Lancashire*. vol. 9, p. 259

9. Such an issue was refused in a case where there was nothing but the bare assertion of the Plaintiff's heirship, on the one side, and the assertion of the Defendant's ignorance on the other. *Ibid.*

10. Principles and practice, in a case where the Plaintiff's relief in equity is dependent upon his previously establishing his legal right. *Smith* v. *The Earl of Effingham*. vol. 10, p. 589

11. A judgment creditor, who had sued out an elegit, filed his bill to establish his priority over subsequent incumbrances on the estate of his debtor. By the decree the bill was retained for twelve months, with liberty to the Plaintiff to proceed at law, and the Defendants were restrained from setting up outstanding terms and the Statute of Limitations; further directions were reserved. The Plaintiff brought an ejectment, which was defended by one only of the Defendants, and also by the occupying tenants. The latter set up the Statute of Limitations, and obtained verdicts. On the cause coming on for further directions, the Plaintiff presented a petition, stating the failure of his proceedings at law, and asking liberty to bring a new action, and that the Defendants might be ordered to defend the same, with proper directions, or for an issue, or for a stay of proceedings, to enable the Plaintiff to appeal to the House of Lords against the original decree. The Court refused to grant the prayer of the petition, and held, that such relief was inconsistent with the practice: that the verdict against one Defendant could not, under such circumstances, be considered as a verdict against all, and that no application for a stay of proceedings could be entertained, until the Plaintiff had appealed. *Smith* v. *The Earl of Effingham*. vol. 11, p. 82

12. In a suit against several persons, *A.*, *B.* and *G.*, the decree directed an issue as to *G.*, and reserved the costs of *A.* and *B.*, and the "subsequent" costs of all other parties, and further directions. *G.* was successful on the issue. Held, that he was entitled to all his costs. *Rice* v. *Gordon*. vol. 14, p. 508

13. Heir at law refused a second issue to try the validity of a will by which he was disinherited. *Swinfen* v. *Swinfen*. vol. 27, p. 148

14. The rules respecting new trials are less stringent in equity than they are at law, and the practice here has always been, not to consider whether there was evidence which would support the finding of the jury, and in that case to refuse a new trial, but the course in courts of equity has been, to consider whether, having regard to the entire subject-matter and to the whole of the evidence given at or before the trial, and what has since become known, the Court is satisfied that full and complete justice has been done between the parties, and that no further investigation is necessary for the purpose of attaining that end, and unless it is so satisfied, the Court requires that the matter shall be again tested by an examination before a jury, with such directions and modification as it may consider desirable for the fair, thorough and impartial sifting of the whole matter. *Swinfen* v. *Swinfen*. vol. 27. p. 148

15. Heir at law ordered to pay the costs of an issue to try the validity of the will, in which he had failed. *Ibid.*

16. An heir is entitled to have the validity of a contested will tried upon an issue, or possibly, under the 25 & 26 *Vict.* c. 42, by a jury before the Court of Chancery. But when the heir has caused the difficulty, as when he has destroyed the will, or where it is traced into his possession and he does not produce it, he has no such right. *Williams* v. *Williams*. vol. 33, p. 306

17. In a suit by an heir at law, contesting the validity of his ancestor's will, he is not entitled, as of right, to an issue *devisavit vel non*. *Cowgill* v. *Rhodes*. vol. 33, p. 310

18. Upon a bill by the heir, impeaching a will, the Plaintiff did not cross-examine the Defendant's witnesses nor apply for a trial by a jury. The Court refused an issue, and determined the validity of the will upon the evidence before it. *Ibid.*

19. Motion for an issue before the evidence had been completed. Held, irregular, and refused with costs. *Hamp* v. *Hamp*. vol. 35, p. 189

20. Where the validity of a patent has not been the subject of any legal proceedings, the patentee must prove its validity at law, before the Court of Equity will protect him; but having once established its validity, then the Court of Equity will protect him against any other person until that person proves its invalidity. *Bovill* v. *Goodier*. vol. 35, p. 427

ISSUE (GIFT TO).

[*See* ABSOLUTE INTEREST, GIFT TO A CLASS (SUBSTITUTION).]

1. The words "lawful issue" in a devise to four parents and their "lawful issue respectively, in tail general," without benefit of survivorship to and amongst their issue respectively, as tenants in common, held, upon the context of a will, to be words of purchase, and not of limitation. *Curshaw* v. *Newland*. vol. 2, p. 145

2. The word "issue" may be restricted so as to mean children, and conversely the word "children" may, from the context, be enlarged so as to be construed "issue;" each case depends on the peculiar expressions used, and the structure of the sentences. If the case be doubtful, the Court prefers that construction which will most benefit the testator's family, on the supposition that this must more nearly correspond with his intention. *Farrant* v. *Nichols.* vol. 9, p. 327

3. Though the word "issue" be, in one clause of a will, construed "children," it does not necessarily follow that it will receive the same construction in all the other clauses. *Hedges* v. *Harpur.* vol. 9, p. 479 (*Waldron* v. *Boulter.* vol. 22, p. 284)

4. "Lawful issue" in a will, held, upon the context, to mean "children," and that, to the exclusion of "grandchildren" born prior to the period of distribution. *Edwards* v. *Edwards.* vol. 12, p. 97

5. The word "issue" construed "children" by force of the gift to the issue of the issue being of their "parents" share. *Pope* v. *Pope.* vol. 14, p. 591

6. The word "issue," upon the construction of the will, confined to children, to the exclusion of grandchildren or remoter issue, it being used in connection with the word "parent." *Bradshaw* v. *Melling.* vol. 19, p. 417

7. The word "issue" includes all remote descendants of the person whose issue is referred to, and the burden of proof lies upon him who contends the contrary. *Ross* v. *Ross.* vol. 20, p. 645

8. By a settlement, a trust fund was settled after the death of husband and wife upon the children equally who should survive them. But if any child should die in the life of the husband and wife, and leaving "issue" then living, his share should go equally between the issue of such child, when and at such time as the respective shares of such child would have become due and payable. Held, that the "issue" of "children" took *per stirpes*, and that the successive generations of "issue" took their respective shares by substitution, and not concurrently, so that grandchildren and great-grandchildren could not take together as a class. *Robinson* v. *Sykes.* vol. 23, p. 40

9. Bequest to *A.* and if she die leaving issue, to transfer it among such issue, and if she shall die leaving no issue, then over. Held, that the issue of all generations participated in the gift. *In re Jones's Trusts.* vol. 23, p. 242

10. Gift to "issue" after the death of a tenant for life, held to include issue of every degree. *Maddock* v. *Legg.* vol. 25, p. 531

11. Bequest to persons for life, and after their deaths, "unto their and each of their issue, and the survivor or the survivors of them, on their severally attaining twenty-one, in equal proportions." On the death of the last tenant for life, there were three generations of issue living. Held, that all who survived and attained twenty-one participated in the fund. *Maddock* v. *Legg.* voi. 25, p. 331

12. A testator gave his wife a power of appointment in favour of "his children including grandchildren and more remote issue, such issue coming into being in the lifetime of his wife." Held, that, under an appointment to grandchildren, a grandchild born after the decease of the testator's widow might take. *Thomas* v. *Lloyd.* vol. 25, p. 620

13. A testator bequeathed his residue equally to his five cousins who should be living at the time of his decease, and to the "issue" of such of them as should be then dead leaving issue, share and share alike, "such issue respectively, nevertheless, taking between them a parent's share." Held, that the word "issue" was to be construed "children," and that grandchildren were excluded. *Smith* v. *Horsfall.* vol. 25, p. 628 (See *Maynard* v. *Wright.* vol. 26, p. 285)

14. Bequest of a sum of stock to *A.* for life, and, upon his death, "unto and amongst his issue male," with a gift over, on the death of *A.* "without leaving issue male." Held, that the issue male claiming through males were alone entitled; that the sons of the daughters of *A.* were excluded, and that the issue male took *per capita*. *Lywood* v. *Kimber.* vol. 29, p. 38

15. *A. B.* conveyed freeholds to trustees and their heirs, in trust for his wife during widowhood, and afterwards on trust to convey and divide "such estate and premises" amongst the children and the issue of their children who should be then living as tenants in common (the issue of any deceased child to take their parent's share). Held, that "issue" must be read children, and secondly, that the children and their issue took life estates only. *Tatham* v. *Vernon.* vol. 29, p. 604 (See *Fairfield* v. *Bushell.* vol. 32, p. 158)

16. A testator gave legacies to his nieces, with power to his executors to settle them on his nieces for life, and at their deaths for the benefit of their "issues." He also gave them his residue, with like power to settle it on his nieces and for the benefit of "their respective children," as provided with respect to the legacies. Held, that "issues," must be construed "children," and that the children of nieces took, to the exclusion of grandchildren. *Baker* v. *Bayldon.* vol. 31, p. 209

17. The word "issue" in a deed construed "children," in regard to personalty. *Marshall* v. *Baker*. vol. 31, p. 608

18. Devise to *A.* for life, and after her decease to her "lawful issue" then living and the "children" of such of them as should be then dead, in equal shares, the children of such issue to take their "parent's share." Held, that the word "issue" was to be construed "children," and that the children of *A.* and the children of *A.*'s children who predeceased her took for life only. *Fairfield* v. *Bushell*. vol. 32, p. 158

19. A testator bequeathed his residuary personal estate to his nephew and niece equally, and after their respective deaths, amongst their "issue," if there should be any "children" to take their parents' share. But in case the nephew or niece died "without issue, or leaving such they should die under twenty-one without issue," then he gave his or her share to the other of them or his or her issue "if he or she be then dead leaving issue as aforesaid." The niece died in 1811, leaving issue; the nephew died in 1862, leaving no issue. Held, that "issue" in the first part of the will meant "children," but in the latter part "issue generally," and that on the death of the nephew, all the issue of the niece *then* living took *per capita*. *Re Corrie's Will*. vol. 32, p. 426

JEWISH CHARITY.

[*See* CHARITABLE BEQUEST.]

JOINT AND SEPARATE ASSETS.

[*See* PARTNERSHIP (WINDING-UP).]

JOINT LIABILITY.

[*See* CONTRIBUTION, PARTIES (ABSENT), SERVICE OF DECREE].

1. A testator bequeathed to *A.* a legacy in trust for *B.* for life, with remainder for her children. *A.* and the three other executors transferred the legacy into the names of *A.* and *B.*; and *B.*, having survived *A.*, sold it, and applied it to her own use. After *B.*'s death, her child filed a bill against the representatives of *A.* alone, to make them responsible for the breach of trust. Held, that the other executors and the representatives of *B.* were necessary parties. *Perry* v. *Knott*. vol. 4, p. 179

2. *A.* and *B.* were obligors in a *joint* bond: *A.*, who was alleged to be the principal debtor, died. Held, that his assets were not in equity liable upon the bond, but that the liability survived to *B.* *Richardson* v. *Horton*. vol. 6, p. 185

3. In a suit to remedy a breach of trust, it is not, since the New Orders, necessary to make every party participating in the breach of trust party to the suit. *Attorney-General* v. *Corporation of Leicester*. vol. 7, p. 176
(See *Perry* v. *Knott*. vol. 5, p. 293
Allan v. *Houlden*. vol. 6, p. 148
Norris v. *Wright*. vol. 14, p. 310)

4. A testator devised his residuary real and personal estate to *A.* and *B.*, on trusts in which *B.* was beneficially interested. *B.* received part of the assets and died. Held, that a bill could not be maintained by the surviving trustee against the representatives of *B.* alone to recover the trust fund received by him, but that the bill ought to seek the general administration of the testator's estate. *Chancellor* v. *Morecraft*. vol. 11, p. 262

5. Bond by three obligors, whereby they bound themselves "jointly," and their heirs, &c. "respectively," to pay, which was conditioned to be void, if they or either of them, their or either of their heirs, paid. Held, that it was a joint and several obligation, and, one having died, that his assets were liable. *Tippins* v. *Coates*. vol. 18, p. 401

6. Relief may be had for a breach of trust committed by two trustees against one in the absence of the representatives of the other. *Strong* v. *Strong*. vol. 18, p. 408

7. A trust fund settled on husband, wife and children in succession, was received by the husband, and lent by him to his brother. A bill by one trustee against the other trustee, the husband and wife, and omitting the brother and children, held sustainable, and a decree was made against the husband, reserving all rights against the brother and the trustees. *Hughes* v. *Key*. vol. 20, p. 395

8. Two deceased trustees having committed a breach of trust by mortgaging, instead of selling the testator's real estate, and accounts of the estate being necessary, it was held that, notwithstanding the 32nd General Order of *August*, 1841 (Ord. vii. 2), a suit could not be maintained to charge the estate of one trustee, and take the accounts, in the absence of the representative of the other. *Dewaynes* v. *Robinson*. vol. 24, p. 86

9. In a suit to make a trustee liable for a part of the trust fund which was not forthcoming, he stated that it had been received by the tenants for life, who were dead. Held, that their personal representatives were necessary parties. *Williams* v. *Allen*. vol. 29, p. 292

JOINT TENANCY.

[*See* TENANCY IN COMMON.]

1. Bequest of 500*l.* to *A.*, and in case of her death, either before or after the tes-

tator, to devolve to her child or children, or in the event of their being also dead at her decease, to *B.* There were three children, one of whom only survived. Held, that he was entitled to the whole fund. *Currie* v. *Gould.* vol. 4, p. 117

2. Bequest "to *A.* and B. of the sum of 25*l.* per annum each, for and during the term of their natural lives, or the life of the longest liver of them, for their or her own absolute use and benefit." Held, that on the death of *A.*, her annuity survived to *B.* for her life. *Hatton* v. *Finch.* vol. 4, p. 186

3. A testatrix gave unto *A.* and *B.* a sum in the Long Annuities, to be equally divided during their lives, after which she gave the said sum to *C.* Held, that the survivor of *A.* and *B.* took for life. *M'Dermott* v. *Wallace.* vol. 5, p. 142

4. A sum of money was remitted to *England*, to be secured for the benefit of a married woman and her children, so that the same might not come to the hands of her husband. Held, that they took as joint tenants. *Bustard* v. *Saunders.* vol. 7, p. 92

5. Devise to trustees and their heirs, "upon trust for the use and benefit of" *A.*, *B.*, and *C.* (without words of limitation). Held, that *A.*, *B.*, and *C.* took as joint tenants in fee. *Moore* v. *Cleghorn.* vol. 10, p. 423

6. A testator gave his real and personal estate to *A.*, *B.*, and *C.* as tenants in common. By a codicil he declared, that, if any of the devisees should die in his lifetime, his estate and interest should "go to the survivors or survivor of them, and the heirs, executors, administrators and assigns of such survivor." *A.* died in the testator's lifetime. Held, that *B.* and *C.* took as joint tenants the share intended for *A.* *Leigh* v. *Mosley.* vol. 14, p. 605

7. Where a testator gives property to a parent and his children *simpliciter*, and he has children then *in esse*, the parent and children take together, either jointly or in common; but if there be superadded words importing a settlement, the parent takes for life, with remainder to his children. *Mason* v. *Clarke.* vol. 17, p. 126

8. Bequest "to *A.*" (who was *enceinte* at the time) "and her children." Held, that *A.* and her children took as joint tenants, and, no child having survived the testator, that *A.* was absolutely entitled to the legacy *Ibid.*

9. Devise of "my landed estate in *Westmoreland*," with their appurtenances, and all allotments of common now inclosed, to the testator's three daughters, "to be jointly and equally enjoyed or divided in case of marriage of any of them, and they or the survivor, in case of death, are hereby fully authorized to dispose of the same by will or assignment." Held, that the first words gave the fee, and the second created a joint tenancy, and that the survivor alone had power to devise.

The testator gave his "personal estate, in money and funds," to his three daughters equally; also all plate and furniture, to be shared like the personal estate; and also to his three daughters all his books, pictures, &c.; also a leasehold house, particularly named. Held, that as to the books and leasehold, the daughters were joint tenants. *Cookson* v. *Bingham.* vol. 17, p. 252

10. Under a devise to the children of *A.* and to the heirs of their respective bodies, the children take as joint tenants for their lives, with several inheritances in tail, but under a devise to them and the heirs of their bodies respectively, they take as tenants in common in tail. *In re Tiverton Market Act, Ex parte Tanner.* vol. 20, p. 374

11. A devise to *A.* and *B.* and their "respective heirs," gives to them a joint tenancy for life with several inheritances in fee. *Ibid.*

12. Distinction between a devise to several persons as joint tenants and a gift to them as tenants in common, with benefit of survivorship. *Haddelsey* v. *Adams.* vol. 22, p. 266

13. Two sisters carried on business as farmers. They had a joint account at their bankers, and an establishment and purse in common. They invested part of their money in the purchase of Consols in their joint names, and they had a balance due to them on their banking account, besides a sum due to them from their bankers on deposit notes. Held, on the death of one, that the two sisters were joint tenants of the Consols, and tenants in common of the balance and of the deposit notes. *Bone* v. *Pollard.* vol. 24, p. 283

14. Where both a parent and his children are objects of a bequest of personalty, the tendency of modern decisions is, to construe the limitations as a gift to the parent for life, with remainder to his children. *Audsley* v. *Horn.* vol. 26, p. 195

15. A testator gave his residue to his three children "for their natural lives, viz. they to have the interest during their natural lives." Held, that the three children took during their joint lives and the life of the survivors and survivor. *Neighbour* v. *Thurlow.* vol. 28, p. 33

16. Under a will, *C.* and *D.* were entitled equally to a sum of stock. *C.*, the executor, with the concurrence of *D.*, transferred it into the joint names of *C.* and *D.* Held, that they thereby became joint tenants. *Eames* v. *Godwin.* vol. 31, p. 25

17. Bequest of the income of the residue

equally amongst three daughters *A.*, *B.* and *C.*, "during the term of their natural lives and the lives of the survivors and survivor of them during their and her natural life," with a gift over "after the decease of the survivor of them." *A.* died. Held, that *B.* and *C.* were entitled to the whole income, and that on the death of either of these two, the survivor would be entitled for her life to the whole income. *Cranswick* v. *Pearson*; *Pearson* v. *Cranswick*. vol. 31, p. 624

18. The several receipt by joint tenants of a portion of a trust fund does not destroy the joint tenancy as to the remainder of the fund. *Leak* v. *Macdowall*. vol. 32, p. 28

19. A testator gave the residue of his real and personal estate to his nephews and nieces living at his death. But if any should be then dead, their offspring were to be considered to stand in the place of their parents and to take "the same benefit." Held, that though the nephews and nieces took as tenants in common, their offspring took as joint tenants. *Ibid.*

20. A devise to two persons, in terms importing a joint tenancy, is not changed into a tenancy in common by a subsequent gift over of the "estate" of one of them upon a certain contingency. *Edwardes* v. *Jones*. vol. 33, p. 348

JUDGE.

When the Lord Chancellor is a party to a suit, the bill is addressed to the King, and the cause is heard by the Master of the Rolls: but the decree is formally and technically completed, made final, and enrolled as the decree of the King. But where a public company, in which the Lord Chancellor has shares, are suitors, the bill cannot properly be addressed to the Queen in Chancery.

It is a general rule that no one ought to be a judge in his own cause, and no judge ought, by himself or his deputy, to hear and determine a cause, or make an order, or do any judicial act, in a cause in which he has a personal interest; but even in a case of imputed interest, a judge is not incapacitated from making an order, if, by refusing to do so, justice would be denied. *The Grand Junction Canal Company* v. *Dimes*. vol. 12, p. 63

JUDGMENT CREDITOR.

[*See* CHARGING ORDER, ELEGIT, FIERI FACIAS, INTEREST, ORDER OF DEBTS, PRIORITY, REGISTRATION.]

1. A court of equity has no jurisdiction under the 1 & 2 *Vict.* c. 110, s. 14, to order moneys invested in the name of the Accountant-General to stand charged with a judgment debt recovered at law against the party entitled to such funds. *Miles* v. *Presland*. vol. 2, p. 300

2. Whether an order to pay money into Court to the credit of a cause is an order creating a charge within the meaning of the 1 & 2 *Vict.* c. 110, s. 18; and if so, whether a taking under an attachment for contempt would, under the sixteenth section, invalidate a charge obtained under the thirteenth section.

This Court has no jurisdiction to order the Master of the Common Pleas to vacate a memorandum entered under the 1 & 2 *Vict.* c. 110, of an order of this Court. *Wells* v. *Gibbs*. vol. 3, p. 399

3. After verdict and before judgment had been entered up the Defendant sold his leaseholds by auction. Held, that under the 1 & 2 *Vict.* c. 110, the Plaintiff could not levy execution on the purchase-money. *Brown* v. *Perrott*. vol. 4, p. 585

4. A creditor recovered a judgment in this country, and obtained a charge on his debtor's lands, &c., under the 1 & 2 *Vict.* c. 110, s. 13. He afterwards arrested the debtor in *Jersey* upon *mesne process* for the same debt. Held, that the charge on the lands here was not thereby forfeited under the sixteenth section. *Houlditch* v. *Collins*. vol. 5, p. 497

5. A judgment was entered up, &c. against Mr. *H.* under a warrant of attorney. In the judgment, warrant of attorney, &c., he was named *W. H.*, his proper name being *W. B. H.* Held, that the judgment was valid. *Hotham* v. *Somerville*. vol. 9, p. 63

6. A judgment was obtained against a party under a warrant of attorney. He afterwards took the benefit of the Insolvent Debtors Act. Held, that the judgment creditor was a necessary party to the conveyance of the insolvent's real estate to a purchaser, notwithstanding the 1 & 2 *Vict.* c. 110, s. 61. *Ibid.*

7. A power of sale and exchange was given to trustees, with the consent of the tenant for life. Judgments were entered up against the tenant for life. Whether the trustees could sell without the concurrence of the judgment creditors, *quære*. *Lord Leigh* v. *Lord Ashburton*. vol. 11, p. 470

8. After twelve months, a judgment creditor may enforce his equitable charge against the real estate, although twelve months have not elapsed since its registration. *The Derbyshire and Staffordshire, &c., Railway Company* v. *Bainbrigge*. vol. 15, p. 146

9. A foreign judgment constitutes but a simple contract debt. *Wilson* v. *Lady Dunsany*. vol. 18, p. 273

10. A judgment creditor ranking after a first mortgagee, but prior in date to a further charge, and to other judgments, held entitled to a foreclosure, although

all the other parties insisted on a sale. *Messer* v. *Boyle*. vol. 21, p. 559

11. The rights of simple contract creditors of an ancestor, as against the descended estates, are not defeated by judgments entered up against the heir for his personal debts before suit. *Kinderley* v. *Jervis*. vol. 22, p. 1

12. Under the 1 & 2 *Vict.* c. 110, a judgment order for costs has no retrospective operation as against purchasers, &c., upon a minute being left with the Master of the Common Pleas. *Hargrave* v. *Hargrave*. vol. 23, p. 484

13. Judgment creditors of mortgagees who are paid off need not now concur in conveyances of the mortgaged land. *Greaves* v. *Wilson*. vol. 25, p. 434

14. Whether a judgment against a municipal corporation operates as an equitable mortgage on its lands, the Municipal Corporation Act forbidding a mortgage, except with the assent of the lords of the treasury, *quære*. *The Mayor, &c. of Brecon* v. *Seymour*. vol. 26, p. 548

15. A judgment creditor, though unable to proceed in equity to obtain the benefit of his charge before the expiration of a year (1 & 2 *Vict.* c. 110, s. 13), is, nevertheless, entitled to have the life interest of his debtor in lands at once impounded for his protection. *Yescombe* v. *Landor*. vol. 28, p. 80

16. *A. B.*, a solicitor, had bought up an annuity charged on the estate of Lord *K.* Lord *K.*'s executor filed a bill against *A. B.* alone, insisting that *A. B.* had purchased it as the solicitor and on behalf of Lord *K.* Held, that Lord *K.*'s judgment creditors were not necessary parties to the suit. *Ford* v. *Tennant*. vol. 29, p. 452

17. A registered order of the Court of Probate does not create a charge on lands. *Bull* v. *Hutchens*. vol. 32, p. 615

18. A judgment creditor, who has sued out an elegit without effect, is entitled (independently of the statute of 1 & 2 *Vict.* c. 110) to equitable relief, though the year from entering up the judgment has not expired. But whether he is entitled to relief under the statute as regards the leaseholds of the judgment debtor which are wearing out, *quære*. But the Court will, within the twelve months, interfere and protect the property charged by a judgment from destruction. *Partridge* v. *Forster*. vol. 34, p. 1

JURISDICTION.

[*See* CHARITY, FOREIGN LAW, INJUNCTION, JURISDICTION (FOREIGN COUNTRY), JURISDICTION (OUT OF THE), QUESTIONS OF LAW AND FACT, TAXATION.]

1. Injunction granted to restrain commissioners, though their act gave jurisdiction to the quarter sessions. *Birley* v. *Constables of Charlton*. vol. 3, p. 499 (*Armitstead* v. *Durham*. vol. 11, p. 556)

2. Bill by a corporation, to have a lease of the corporation property delivered up, as void under the Municipal Corporation Act (5 & 6 *Will.* 4, c. 76), dismissed with costs, on the ground that the objection was legal, and that the question of its validity ought to be first determined at law. *The Corporation of Arundel* v. *Holmes*. vol. 4, p. 325

3. Cross bill by the lessee to have an inquisition finding the lease collusive quashed, and delivered up to be cancelled, as being irregular and fraudulent, dismissed with costs, on the ground of want of jurisdiction. *Ibid.*

4. Pending a litigation as to administration in the Ecclesiastical Court, a bill was filed praying a receiver, and that, upon the administrator being appointed and brought before the Court, the rights of the parties might be declared and the estate administered, a demurrer to the latter part of the relief was allowed. *The Baron de Feuchères* v. *Dawes*. vol. 5, p. 110

5. In cases where there are outstanding terms, which may be set up in defence to the action, and prevent a trial of the real merits of the case, or where the facts are such, and of a nature so complicated, that complete and effectual relief can only be given in equity, this Court will afford its assistance, and will, if the circumstances require it, first see that the legal requisites to the Plaintiff's title are established, and then give the necessary relief; but this must be upon a bill framed for the purpose, stating the difficulties, and praying the assistance of the Court to remove them. The cases of dower and partition are, however, exceptions to the rule. *Strickland* v. *Strickland*. vol. 6. p. 77

6. Where a party sought in this Court to recover a real estate on the ground of his interest being equitable, but, did not ask relief against any impediment to a trial at law, and it turned out at the hearing that his title was a legal title, the Court refused to retain the suit to enable the Plaintiff to establish his right at law by an action or issue, and dismissed the bill. *Ibid.*

7. The Crown, in consideration of the past services of the town, the situation and importance of the place, the injury and damage to be expected from the king's enemies, from the current of water, and from the traffic on the bridges, and the ruin likely to take place, if the means of repairing were not provided, granted certain tolls to the corporation of *Shrewsbury*, to be applied in reparation of the bridges and walls, without yielding any account or reckoning thereof. Held,

that the grant was not made to the corporation for its own benefit only as a reward for prior services: that it was the duty of the corporation to apply so much of the receipts as might be required for the purposes stated: that this was a gift for a public and general purpose for the benefit of the town, in aid of a general charge or burden to which the burgesses and inhabitants of the town were liable, and that it was a gift to charitable uses under the statute of *Elizabeth*, and was therefore subject to the jurisdiction of this Court. *The Attorney-General* v. *The Corporation of Shrewsbury*. vol. 6, p. 220

8. The Master of the Rolls has jurisdiction to direct costs which have been ordered by the Lord Chancellor to be paid by the Defendant to the Plaintiff, to be set off against costs ordered by the Master of the Rolls, to be paid by the Plaintiff to the Defendant. The order may be obtained on motion, and the notice of motion may be given before the taxation. *Cattell* v. *Simons*. vol. 6, p. 304
9. No equity can be founded on an allegation, that a court legally constituted is not properly competent to decide questions within its jurisdiction; and where the legislature has given jurisdiction to a court provided by the act, and has made its decision final, if any inconvenience arises from the legal exercise of the jurisdiction, the legislature alone can supply a remedy. *The Barnsley Canal Company* v. *Twibell*. vol. 7, p. 19
10. Jurisdiction of the Court of Chancery to moderate the amount of compensation awarded by the town council, on wrong principles, to a corporate officer under the Municipal Corporation Act. *The Attorney-General* v. *The Corporation of Poole*. vol. 8, p. 75
11. The Court assumes that an order of an English court of competent jurisdiction proceeds on a just foundation, and will not enter into the consideration of the merits of it, upon an ancillary proceeding taken here to enable the parties to remove fraudulent impediments created to defeat the execution of the order. *Taylor* v. *Wyld*. vol. 8, p. 159
12. A canal act provided, that in case the company and the coal owner could not agree as to the amount of compensation for the coal taken for the purposes of the canal, it should be settled by a jury summoned by the commissioners, whose verdict was "to be conclusive, and should not be removed, by *certiorari* or other process whatever, into any of the courts of record at *Westminster*, or any other court." A bill was filed, praying an injunction to restrain proceedings before a jury, on the ground that the Defendant was entitled to no compensation, and that the special jurisdiction provided by the act was not so constituted as to be likely to come to a just conclusion. Held, that the Plaintiffs were not entitled to an injunction if the Defendant was entitled to any compensation, the amount of which had to be ascertained; but whether this Court had any jurisdiction to interfere in the matter, if it had clearly appeared that the Defendant was entitled to no compensation, *quære*. *Taylor* v. *Wyld*. vol. 8, p. 159
13. The whole equity jurisdiction of the Court of Exchequer, including that relating to the revenue, was transferred to this Court by the *5 Vict.* c. 5, s. 1. *The Attorney-General* v. *The Corporation of London*. vol. 8, p. 270
14. In the vacation, the Vice-Chancellor heard a motion for the Master of the Rolls, which he refused. Held, that no application for the same purpose could afterwards be made to the Master of the Rolls, even if supported on different grounds from those before the Vice-Chancellor. *Man* v. *Ricketts*. vol. 9, p. 4
15. The Vice-Chancellor, by permission of the Lord Chancellor, granted an injunction in a cause attached to the Rolls Court. Held, that the Master of the Rolls had no authority to dissolve it. *Paredes* v. *Lizardi*. vol. 9, p. 490
16. The absence of a remedy for a supposed wrong, in another place, is not of itself any reason for this Court assuming a jurisdiction on the subject. The case must be such as to bring it properly within the jurisdiction of this Court, on other grounds. *Ryves* v. *The Duke of Wellington*. vol. 9, p. 579
17. The Master of the Rolls has no jurisdiction, in a Vice-Chancellor's cause, to order amendments, made under an irregular Rolls' order, to be taken off the file. *Edge* v. *Duke*. vol. 10, p. 184
18. The Master of the Rolls has not authority to order irregular amendments to be taken off the file in a Vice-Chancellor's cause. *Fletcher* v. *Moore*. vol. 11, p. 617
19. Whether the Master of the Rolls has jurisdiction to enforce the orders of the Commissioners for the sale of encumbered estates in *Ireland—quære*. *In re Scott, Ex parte Barton*. vol. 12, p. 361
20. The Master of the Rolls restrained the payment of a dividend declared *the day on which the bill was filed*, but this was reversed by the Lord Chancellor. *Carlisle* v. *South-Eastern Railway*. vol. 13, p. 295
21. The Plaintiff demised a number of small leasehold houses to the Defendant, who having committed a forfeiture, the Plaintiff re-entered and determined the lease. The Defendant thereupon distrained on the tenants, and prevented the Plaintiff taking possession and repairing, and the Plaintiff apprehended a forfeiture. The Defendant had also, being insolvent, received the rent; and,

in consequence of his conduct, the property had become greatly depreciated, and some of the houses had been abandoned by the tenants. The bill prayed an account of the rents, an injunction to restrain the Defendant from receiving the rents and distraining, and that the right might be determined under the Court. A general demurrer was allowed. *Aldis* v. *Fraser.* vol. 15, p. 215

22. A purchaser under an order in lunacy paid his purchase-money, in the manner directed by the Lords Commissioners in Lunacy, disregarding a charge of the Plaintiff and a suit to enforce it, of which he had notice. The amount was principally applied in payment of the costs of the receiver in lunacy relating to the sale, &c. Upon a bill by the Plaintiff to make the purchaser liable for not seeing to the due application of the purchase-money, the Master of the Rolls considered himself bound by the order in lunacy, and, as having no jurisdiction to alter it, retained the bill, with liberty to the Plaintiff to apply in lunacy for the discharge or variation of the order. *Norris* v. *Lord Dudley Stuart.* vol. 16, p. 359

23. Where notice of motion is irregularly given before the Master of the Rolls, in a Vice-Chancellor's cause, this Court has jurisdiction to award costs. *Yearsley* v. *Yearsley.* vol. 19, p. 1

24. The Master of the Rolls has no jurisdiction under the 6 *Ann. c.* 18. *Meyrick* v. *Lawes.* vol. 23, p. 449

25. A creditor who, after his debtor's death, obtains an attachment in the Lord Mayor's Court against part of the assets, gains no priority over the fund attached as against the other creditors of the deceased. *Redhead* v. *Welton.* vol. 29, p. 521

26. Where a shareholder in a mining company on the cost-book system in the Stannaries was being sued in *London*, and the Vice-Warden had no power to stay the action: Held (the company having ceased to carry on business), that this was a proper case for a winding-up order in this and not in the Stannaries Court. *In re the Wheal Anne Mining Company.* vol. 30, p. 601

27. Whether an attachment issued out of the Lord Mayor's Court of moneys of the debtor in the hands of persons resident out of the city is effectual, *quære.* *Webster* v. *Webster.* vol. 31, p. 393

JURISDICTION (FOREIGN COUNTRY).

[*See* DOMICILE, FOREIGN LAW, INJUNCTION (FOREIGN COURT).]

1. A foreign sovereign prince, who was also an *English* peer, was made a Defendant to a suit, and served with a letter missive. The Lord Chancellor refused to recall it. The Defendant then appeared, and filed a demurrer for want of jurisdiction. Held, first, that the Lord Chancellor had not decided that the Defendant was liable to the jurisdiction of the Court; and secondly, that the Defendant had not, by appearing, waived any defence to the bill. *The Duke of Brunswick* v. *The King of Hanover.* vol. 6, p. 1

2. Discussion of the question whether a sovereign prince is liable to the jurisdiction of the courts of a foreign country, in which he happens to be resident, and as to the liability to suit of one who unites in himself the characters both of an independent foreign sovereign and a subject. *Ibid.*

3. A sovereign prince, resident in the dominions of another, is ordinarily exempt from the jurisdiction of the courts there. *Ibid.*

4. A foreign sovereign may sue in this country, both at law and in equity; and, if he sues in equity, he submits himself to the jurisdiction, and a cross bill may be filed against him, which he must answer on oath; but a foreign sovereign does not, by filing a bill in Chancery against *A.*, make himself liable to be sued in that court for an independent matter by *B.* *Ibid.*

5. The King of *Hanover*, after his accession, renewed his oath of allegiance to the Queen of *England*, and claimed the rights of an *English* peer. Held, that he was exempt from the jurisdiction of the *English* courts for acts done by him as a sovereign prince, but was liable to be sued in those courts in respect of matters done by him as a subject. Held, also, that the sovereign character prevailed where the acts were done abroad, and also where it was doubtful in which of the two characters they had been done. *Ibid.*

6. This Court will not carry into effect an interlocutory decree of a foreign Court. *Paul* v. *Roy.* vol. 15, p. 433

7. Whether the proper mode of enforcing a foreign judgment is not by action at law, *quære.* *Ibid.*

8. The Plaintiffs were equitable mortgagees of the shares of *J. H.* in the Woollen Cloth Company, and the *Dhobah* Company were general creditors of *J. H.* Both companies having notice of the Plaintiffs' rights, the *Dhobah* Company commenced proceedings in the Lord Mayor's Court, and attached the dividends on the shares in the hands of the Woollen Cloth Company. The same solicitor was employed for both companies, and two persons were directors in both companies. No defence was made, and the *Dhobah* Company obtained payment. Held, first, that the Plaintiffs

could not recover them back from either company; but secondly, that the *Dhobah* Company could not avail themselves of a similar attachment in the Lord Mayor's Court, obtained pending this suit; and thirdly, that the Plaintiffs were entitled to a receiver of the future dividends. *Anderson* v. *Kemshead.* vol. 16, p. 329

9. Bill by an *English* shareholder against a *Dutch* railway company, to be relieved against a forfeiture of shares, dismissed with costs, the undertaking and direction being foreign, and there being a decision in the *Dutch* Courts opposed to the Plaintiff's view. *Sudlow* v. *Dutch Rhenish Railway Company.* vol. 21, p. 43
10. Extent to which a foreign judgment is impeachable, when the judgment creditor seeks to enforce in this country. *Reimers* v. *Druce.* vol. 23, p. 145
11. A foreign judgment, sought to be enforced in this country, is impeachable for error apparent on the face of it, sufficient to shew that such judgment ought not to have been pronounced. *Ibid.*
12. The reasons attached to a foreign judgment are part of the record, and is to be treated as an integral part of the judgment. *Ibid.*
13. As to the jurisdiction of the Court of Chancery to interfere in questions relating to immovable property abroad. *Norris* v. *Chambres.* vol. 29, p. 246
14. A suit between parties residing here to enforce a lien on immovable property situate out of the jurisdiction requires that some special state of circumstances should exist in order to enable the Court to give any relief. *Ibid.*
15. A director of a company, established in *England* to work some Prussian mines, had paid a large sum towards the purchase. The vendor annulled the contract, and resold the mines to a new company with notice. A bill, by the representative of the director, to establish a lien on the estate for the advances, was dismissed. *Ibid.*
16. When the property of a captive prince is taken by a hostile sovereign power in war, no court of justice has jurisdiction over such a transaction. *The Ex-Rajah of Coorg (Veer Rajundur Wadeer)* v. *The East India Company.* vol. 29, p. 300
17. Right to relief when a foreign power takes prisoner a private individual, an enemy, and while so holding him, obtains possession of documents which establish his right to recover a debt due from another to him in his private capacity. *Ibid.*
18. A foreign attachment can only affect moneys for which the debtor himself could maintain an action at the time of the attachment. *Ibid.*
19. Attachment of the produce of the sale of a commission in the army, in the hands of the army agents, held ineffectual as against the lien and right of set-off of such agents and as against a prior equitable assignment. *The Ex-Rajah of Coorg (Veer Rajundur Wadeer)* v. *The East India Company.* vol. 29, p. 300
20. A bill was filed in *England* to administer the trusts of a Scotch creditors' deed, under which a mining concern in *Scotland* was to be carried on by a trustee. All the parties, except the Plaintiff, were domiciled in *Scotland*, but an order had been obtained to serve the bill there. The Defendants appeared, and demurred to the jurisdiction. The demurrer was allowed by the Master of the Rolls, and his decision was affirmed by the Lord Chancellor. *Cookney* v. *Anderson.* vol. 31, p. 452

JURISDICTON (OUT OF THE).

[*See* SERVICE OUT OF THE JURISDICTION.]

1. Old practice of praying process against parties out of jurisdiction. *Munos* v. *De Tastet.* vol. 1, p. 109
2. After a patentee had established his patent as against one person at law, he instituted proceedings for an infringement against another in equity. The Court granted the Defendant an issue as to the novelty of the invention, but refused it as to the sufficiency of the specification, holding that the sufficiency of the specification had been already decided in the action at law, a decision in which this court so far as it was matter of law not depending on the novelty of the invention, concurred. *Bovill* v. *Goodier.* vol. 35, p. 427
(See *Dibbs* v. *Goren.* vol. 1, p. 457)

JURY.

[*See* ISSUE AT LAW.]

1. Practice as to praying a *tales* upon the trial of an issue directed by the Court of Chancery. *Ellis* v. *Bowman.* vol. 13, p. 318
2. This Court will not send a question to be tried by a jury, unless it entertains serious doubt on the matter. *Gray* v. *Haig; Haig* v. *Gray.* vol. 20, p. 219
3. The Court will not send to be tried by a jury a question which is supported by competent evidence, and which, if untrue, could have been disproved by evidence in the possession of one party, who has taken means to prevent it being made available for the determination of the question by the Court. *Ibid.*
4. The Court will not, before the hearing, direct a case to be heard before a jury under the 21 & 22 *Vict.* c. 27, s. 2, if one party opposes it. *George* v. *Whitmore.* vol. 26, p. 557

KING.

[*See* PREROGATIVE.]

LACHES.

[*See* DELAY, WAIVER.]

LANCASTER (PALATINE COURT).

[*See* PALATINE COURT.]

LANDLORD AND TENANT.

[*See* FIXTURES, LEASE, OPTION TO PURCHASE.]

1. King *Charles* the Second, by letters patent, granted some property in fee, subject to a fee farm rent, and to a proviso of re-entry, in case a decree should be made at the suit of the King for repairing the property, and the same should afterwards remain for a year out of repair. The Crown afterwards granted away the rent. Held, that the proviso for re-entry could not be exercised, and that it therefore formed no objection to the title to the property. *Flower* v. *Hartopp.* vol. 6, p. 476
2. An old tenant from year to year of charity land had, by an outlay of capital, &c., greatly enhanced its value. The old tenant and *A. B.* were both willing to take a lease at a rent exceeding the value; but the rent offered by *A. B.* was the largest. The Court held, that, notwithstanding the fair claims of the old tenant, the benefit to the charity must be regarded, and that *A. B.*'s offer ought to be accepted, if the excess of the rent offered by him exceeded the amount of compensation to which the tenant was equitably entitled on being turned out. *The Attorney-General* v. *Gains.* vol. 11, p. 63
3. Reference, under the circumstances directed, to ascertain whether any and what compensation ought to be paid to an outgoing tenant from year to year for his outlay of capital on charity lands. *Ibid.*
5. The Court will restrain a tenant from pulling down a house and building another which the landlord objects to. *Smyth* v. *Carter.* vol. 18, p. 78
6. Under a contract for a lease of a mill, to contain "all usual and necessary covenants and provisoes," and particularly a covenant on the part of the lessee to keep the mill in good tenantable repair. Held, that the lessee was not entitled to have introduced into the covenant the words "damages by fire or tempest only excepted." *Sharp* v. *Milligan.* vol. 23, p. 419
7. Under a lease of a farm, the tenant was bound to keep in repair the buildings to be erected thereon. During the term, the tenant, with the permission of the landlord, who was lord of the manor, built a house on the waste adjoining the farm, and he enjoyed it with the farm. Held, that the tenant was also under an obligation to keep this house in repair. *White* v. *Wakley.* (No. 1.) vol. 26, p. 17

LANDS CLAUSES ACT.

[*See* LANDS CLAUSES ACT (COSTS), RAILWAY.]

1. Trustees of an under lease of church property authorized to take steps to obtain compensation for their tenant right of renewal, in an act to make a new street, pending in parliament, and which would require part of the property. *Jones* v. *Powell.* vol. 4, p. 96
2. A canal company was authorized by its Act, to purchase the coal, which the safety of the canal required to be left unworked. The purchase of part was delayed many years, and in the mean time a lease had been granted by the coal owner to a coal worker. The company purchased the interest of the owner. Held, that the coal worker was also entitled to compensation. *The Barnsley Canal Company* v. *Twibell.* vol. 7, p. 19
3. A landlord entered into some arrangement with his tenant for a lease for eight years. Afterwards, a railway company, being in want of part of the farm, agreed with the landlord for its purchase. Subsequently to this, by some mistake, the landlord, on the same day, granted a lease of the whole farm to the tenant, and conveyed a part of it to the company. A question also arose, under the agreement, whether the landlord or the company was to make compensation to the tenant. The company took possession, and the tenant brought ejectment. Held, under these circumstances, that the company could maintain a suit to stay the ejectment and ascertain the rights, and an inquiry was directed. *The Norwich Railway Company* v. *Wodehouse.* vol. 11, p. 382
4. Some property was mortgaged to the Plaintiffs, who were not bound to receive their money until a future day. A railway company, with knowledge, treated with the mortgagor alone, and, not agreeing, paid into Court, to the credit of the mortgagor, the amount of compensation, but made no provision for the compensation to the mortgagees under the 8 & 9 *Vict.* c. 18, s. 114. The company then took possession, and commenced pulling down the building. The Court restrained the company from proceeding, until the value of the mortgagees' interests had been ascertained and paid or secured. *Ranken* v. *The East and West India Docks and Birmingham Junction Railway Company.* vol. 12, p. 298
5. Under an inclosure act, some lands were allotted to a rector, who had a power of selling to pay the expenses.

Under a railway act, compensation was made in respect of other lands of the rectory and paid into Court. The Court sanctioned the application of the money in Court to the payment of the expenses of the inclosure. *Ex parte Lockwood. In re The Oxford, Worcester, &c. Railway Company.* vol. 14, p. 158

6. A railway company, under pressure, paid the purchase-money for lands bought of a corporation to the vendors, instead of paying it into Court under the 8 & 9 *Vict.* c. 18, s. 69. Upon a bill filed by the former, the latter were, on motion, ordered to pay into Court the purchase-money in their hands for the purpose of interim protection. *The London and North-Western Railway Company* v. *The Corporation of Lancaster.* vol. 15, p. 22

7. In 1845 a landowner received, under an arbitration, compensation for the land, and "in respect of damages which might be sustained by reason of making a railway." Held, that he was not precluded from insisting on a further compensation for future unforeseen damages subsequently sustained. *Lancashire and Yorkshire Railway Company* v. *Evans.* vol. 15, p. 322

8. A railway Act passed in 1844, under which lands were taken. Afterwards, in 1845, the Lands Clauses Act passed; and in 1847 a second railway act was passed extending the first. Held, that the Lands Clauses Act applied to the whole undertaking, became consolidated both with the Act of 1844 and 1847, and that the owner of lands taken under the first Act of 1844 became entitled to the benefit of its provisions. *Ibid.*

9. There is no equity arising from the provisions of the 68th section of the Lands Clauses Consolidation Act, to restrain a party alleging himself to be "injuriously affected" from recovering compensation by an arbitration or a jury, in the manner thereby prescribed, and the balance of authority is against the principle of the decision of *Lord Cottenham* in the *London and North-Western Railway Company* v. *Smith.* *Ibid.*

10. In 1848 a landowner gave a railway company notice for a jury to assess damages; which he alleged he had suffered. In 1849 he made a claim for further subsequent damages; and in 1850, gave notice for an arbitrator to assess the whole damages. Held, that this was not irregular, and that the first notice had not exhausted all the statutory powers. *Ibid.*

11. A bill by a company against an individual claiming to be injuriously affected under the 68th section of the Lands Clauses Act was dismissed, with liberty to the Defendant to apply for the costs, if he should establish his right to compensation. The parties proceeded by arbitration, but neither took up the award. Upon motion by the Defendant that the company might pay the costs or be compelled to take up the award: Held, as to the first, that the Defendant was premature, no award having been made; and, as to the second, that the Court had no jurisdiction. *Sutton Harbour Company* v. *Hitchens.* vol. 16, p. 381

12. The application of the purchase-money of land taken by a railway company to the redemption of land tax, is a re-investment within the Lands Clauses Consolidation Act, and the costs of it are chargeable on the company under the 80th section. *In re The London, Brighton and South Coast Railway Company.* vol. 18, p. 608

13. Inalienable estates tail are within the 7th section of the Lands Clauses Consolidation Act (8 & 9 *Vict.* c. 18), and may, under that statute, be conveyed by the tenant in tail in possession; but that statute does not extend to the Crown, for the King, not being specially named therein, the rights of the Crown are unaffected thereby. *Ex parte The Earl of Abergavenny.* vol. 19, p. 153

14. A canal company had, under their act, compulsory powers of taking land. In 1797 they took the lands of an infant, and the value was assessed by the commissioners. The proceedings, however, were informal and not binding on the parties, but a rent had been paid by the company. The representatives of the infant threatened, in 1857, to eject the company. The Court held, that though the company was not entitled to a conveyance on the ground of the adoption and long acquiescence in the award, still, whether the *compulsory powers had expired* or not, the company were entitled to take the lands, upon payment of a proper compensation. *The Somerset Coal Canal Company* v. *Harcourt.* vol. 24, p. 571
(See *The Duke of Beaufort* v. *Patrick*, 17 *Beav.* 60.)

15. A railway company took some lands belonging to an ecclesiastical corporation, which at the time was let on lease, and a large sum was awarded as a compensation, on the principle of the lessee continuing to pay the rent reserved by his lease. The land being valuable for building purposes, and it being the custom of the corporation to make it available, by accepting surrenders and regranting building leases at a great advance of rent, the Court, on the evidence, Held, that the corporation was entitled to the dividends on the compensation money, in addition to the rent during the term granted by the lease. *Re the Dean and Chapter of Westminster; Re The Hampstead Junction Railway Company.* vol. 26, p. 214

16. Where an Act of Parliament authorizes the construction of a railway over

the land of another, upon making compensation, and the railway is made without authority from the owner of the land, but is afterwards used for fifteen years, with his knowledge, he will not be permitted to interfere with the possession. All he is entitled to is to have the compensation assessed and paid. *Mold* v. *Wheatcroft*. vol. 27, p. 510

17. An engine-house was erected on the lands of another for working a railway. The railway was authorized by an Act of Parliament, but the erection of the engine-house was not. Held, that after an acquiescence on the one hand, and an undisturbed enjoyment on the other for several years, the possession would not be disturbed, but that a proper compensation must be assessed and paid. *Ibid.*

18. If a man stands by and allows another to erect a building on his ground, and he afterwards agrees as to the rent to be paid for it, neither the owner of the land nor any person claiming under him can dispute the right of the builder to use the land. *Ibid.*

19. Persons acquiring interest in lands over which a railway is in operation at a rent, are bound to inquire as to the nature of the holding. *Ibid.*

20. A railway company proposed taking a part of the garden attached to a dwelling-house, thereby cutting off the end of the garden and the summer-house. Held, that, under the 92nd section of the Lands Clauses Consolidation Act, they were bound to take the whole property. *Cole* v. *The West London and Crystal Palace Railway Company*. vol. 27, p. 242

21. The word "house" in the 92nd section of the Lands Clauses Consolidation Act, 1845, comprises everything which would pass by that word in a conveyance. *King* v. *The Wycombe Railway Company*. vol. 28, p. 104

22. A property consisted of a house and stables, &c., with a garden, pleasure grounds and orchard, standing on one and a quarter acres of ground. A railway company proposed to take a part of the orchard and a corner of the garden. Held, that they were bound to take the whole. *Ibid.*

23. A railway company having given notice to take a part of a property, and being required to take the whole, may abandon their notice and refuse to take any part. *Ibid.*

24. The Plaintiffs had erected and covered in three new houses; but while they were in an unfinished state, a railway company required a portion of the land intended to be attached to them as gardens. Held, under the 92nd section of the Lands Clauses Act (8 & 9 *Vict.* c. 18), that the company was bound to purchase the whole of the property; although the houses had never been completed, and had fallen into a state of great dilapidation. *Alexander* v. *The Crystal Palace Railway Company*. vol. 30, p. 556

25. An existing railway company was authorized by an act to make some extensions and new works on their line, and, "for the purposes of the works by the act authorized and the general purposes of their undertaking," the company might raise, by the creation of new shares, any sum not exceeding 100,000*l*. The Lands Clauses Consolidation Act, 1845, was incorporated in the special act, "save so far as the clauses and provisions thereof respectively were expressly varied or excepted by this act." Held, that the 16th section of the Lands Clauses Act (8 & 9 *Vict.* c. 18), which requires the whole capital to be subscribed before the compulsory powers of taking land is put in force, was inapplicable to the new act. *Weld* v. *The South-Western Railway Company*. vol. 32, p. 340

26. A person held under the same lease, a piece of ground on the south side of a public road, on which his house and garden were situate, and a corresponding piece of ground of equal width on the north side, on which he was prohibited from building, but it was used for the purposes of recreation and pleasure. A railway company were desirous of taking the north piece only. The Court refused, on motion, to compel them to take both, as being parts of a "house" within the 92nd section of the Lands Clauses Consolidation Act. *Fergusson* v. *The London and Brighton Railway Company*. vol. 33, p. 103

27. Where a railway company takes lands forming part of a "house" within the 92nd section of 8 & 9 *Vict.* c. 18, the owner can compel the company to take the whole of the other property comprised in the word "house," but not a portion only of it. *Pulling* v. *The London, Chatham and Dover Railway Company*. vol. 33, p. 644

28. In *July*, 1862, the corporation of *London* obtained parliamentary powers for taking the Plaintiff's land for public purposes. But, prior thereto (*June*, 1862), the corporation had contracted to sell these lands to another company, not then empowered to purchase them. The Court held that the corporation had so fettered their judgment and discretion, by contracting to sell that which they had no power to purchase, and that, to a company not then authorized to buy them, that the Plaintiff was entitled to an injunction to restrain the corporation from taking more of his land than they *bonâ fide* required. After this, another act passed in 1864, which, after referring to

the contract of 1862, provided, that that act should not prejudice the right of the company under that agreement, but that the covenants thereof should be as applicable to the said land, if purchased under the powers of this act, as they would have been if they had been purchased under the act of 1862. Held, by the Master of the Rolls, that the last act removed the objection to the agreement, and amounted to a declaratory enactment as to its validity, and that, consequently, the Plaintiff was not entitled to an injunction. The decision was affirmed, Lord Justice *Turner dissentiente. Galloway* v. *The Corporation of London.*
vol. 34, p. 203

LANDS CLAUSES ACT (COSTS).

[*See* PETITION (COSTS).]

1. Under an act of parliament, a corporation took lands for public purposes. The act empowered the Court to order the costs, charges, and expenses of re-investing the compensation-money to be paid by the corporation. On a fourth application, to re-invest the residue amounting to 63*l.*, Held, that the proceeding was not so vexatious as to disentitle the party to the costs. *In re The Merchant Tailors' Company.* vol. 10, p. 485
2. A railway company took lands, the subject of an administration suit, and in which infants and married women were interested, and a reference was made to the Master in the cause, to ascertain what course was the most beneficial for the parties under disability. The company was directed to pay all the costs, charges, and expenses of the petition and reference. *Picard* v. *Mitchell.*
vol. 12, p. 486
3. As to what amounts to a "wilful refusal," within the Lands Clauses Consolidation Act. *In re The Windsor, Staines, and South-Western Railway Act.*
vol. 12, p. 522
4. *A.* was tenant of a copyhold, in trust for *B.* *A.* died, leaving an infant heir; *B.* sold a part of the property to a railway company. Held, that the company were not, under the 82nd section of the Lands Clauses Consolidation Act, liable to pay the costs of proceedings under the Trustee Act, to obtain a conveyance from the infant. *Re the South Wales Railway Company.* vol. 14, p. 418
5. The purchase-money for settled lands taken by a railway was paid into Court, and after a contract had been entered into for laying it out in land, a petition was presented for its temporary investment in the funds. Held, that the proceeding was not vexatious, and that the company ought to pay the costs. *Re The Liverpool, &c. Railway.*
vol. 17, p. 392
6. The costs of payment out of Court of money paid in, under the 67th section of the stat. 4 *Geo.* 4, c. 64 (Gaol Act), being the purchase-money of lands taken by justices of the peace under the 45th and 46th sections of the same act, were ordered to be paid by the corporation of a borough, who, under the Municipal Corporation Act, represented the justices by whom the lands were taken. *In re Justices of Coventry.* vol. 19, p. 158
7. A railway company was bound to pay the costs of the infant devisee, where a question of conversion arose. *In re the Manchester and Southport Railway Company.* vol. 19, p. 365
8. Promoters are liable to pay the costs incurred by the application of the purchase-money in *purchasing a lessee's interest*, but not those of paying off an incumbrance on other parts of the estate of the owner. *Ex parte Corporation of Sheffield.*
vol. 21, p. 162
9. Moneys paid into Court by two companies, under the Lands Clauses Consolidation Act, ordered to be paid out on one petition, and the costs to be apportioned between the companies. *Ibid.*
10. The Court of Chancery (adopting the practice of the Court of Exchequer) gave costs in the case of lands compulsorily taken under an act of parliament, beyond those expressly authorized by the act, and contrary to the practice of this Court in such cases. *In re Robertson.*
vol. 23, p. 433
11. The trustees of two charities, being identical, purchased one estate on behalf of the two charities, out of two sums of money paid into Court by two distinct railway companies for parts of the charity lands taken separately by them. The proceedings to complete and apportion the estate were consolidated. Held, that the costs of the joint proceedings were payable by the railway companies equally, and not in proportion to the values. *The London and Brighton Railway Company* v. *The Shropshire Union Railway Company.* vol. 23, p. 605
12. An act, enabling a public body to take lands compulsorily, directed that in cases of disability, the purchase-money should be paid into Court and laid out in the purchase of other hereditaments, and that in the meantime it should be invested in Consols and the dividends paid to the persons entitled. The act authorized the Court to order "the expenses of all purchases from time to time to be made in pursuance of the act" to be paid by the public body. Held, that the costs of the interim investment in Consols, and of the order to pay the dividends to the tenant for life, must be borne by the fund, and not by the public body. *In re Gould.* vol. 24, p. 442
13. In a transferred Exchequer case, the

Court was only authorized by the act to order the costs of re-investment of the purchase-money of lands compulsorily taken by a corporation. Parties having become absolutely entitled, applied for payment to them out of Court of the money, instead of re-investing it. Held, that the corporation must pay the costs. *In re The Tiverton Market Act.* (No. 2.) vol. 26, p. 239

14. Upon a petition presented by the tenant for life, for the re-investment in land of the compensation-money paid for lands taken by a railway company, the remaindermen and trustees, if they approve, ought to join in the petition or abstain from appearing at the hearing. *Wilson* v. *Foster. Re The Lancashire and Yorkshire Railway Company.* vol. 26, p. 398

15. Costs of remaindermen and trustees, who appeared as respondents upon a petition presented both under the Lands Clauses Acts and in a suit for re-investment in land, disallowed. *Ibid.*

16. A railway, having severed the arable lands from the farm buildings: Held, that the compensation-money might be applied, under the Lands Clauses Act, in the erection of new farm buildings; but that the company were not bound to pay the costs of obtaining the necessary orders for that purpose. *Re the Oxford, &c. Railway Company.* vol. 27, p. 571

17. A railway company took, compulsorily, land, which was the subject of an administration suit. Several proceedings were taken, and applications made in the suit, with reference to the sale to the company, to which the company were not parties. On an application to transfer the purchase-money to the credit of the cause, Held, that the company was bound to pay the costs of all parties of obtaining the several orders in the suit, including all reasonable charges and expenses incident thereto, and of the application to transfer the fund into the suit. *Henniker* v. *Chafy. Re The Manchester and Leeds Railway.* vol. 28, p. 621

18. Under the Lands Clauses Consolidation Act, a company was held not liable to pay the costs of a mortgagee, served with a petition which prayed payment to him out of Court of the compensation-money. *Re Hatfield's Estate; Re The Leeds Waterworks Acts*, 1852, 1856. vol. 29, p. 370

19. Property, the subject of a suit, being interfered with by a public company, the compensation was paid into Court. Upon a petition to transfer the fund into the cause, and to accumulate the dividends, the parties to the suit were served. Held, that, under the Lands Clauses Act, the company was only bound to pay the costs of the Petitioner and the costs of serving the Respondents, but not the costs of their appearance. *Sidney* v. *Wilmer.* (No. 2.) *In re The Clay Cross Waterworks Act*, 1856. vol. 31, p. 338

20. Upon an application by a tenant for life to pay to a mortgagee the amount of compensation-money which was in Court. Held, that the company was not bound to pay the mortgagee's costs of appearing. *Re Hatfield's Estate.* (No. 2.) vol. 32, p. 252

21. When parts of an estate are taken by several railway companies, and the united compensation-moneys are invested in one purchase, the ordinary costs of re-investment are to be borne by them equally, and not in the proportions of their respective compensation-moneys so re-invested. *In re the Maryport, &c. Railway Act. Ex parte the Earl of Lonsdale.* vol. 32, p. 397

22. Portions of an estate were taken by three companies, two of which afterwards merged into one company. Held, that the amalgamated companies must bear two-thirds of the costs of a joint re-investment. *Ibid.*

23. Lands were taken by three separate companies from the same owner. After which, one of the companies leased its line for 999 years. Held, that each company must bear one-third of the costs of the re-investment, with a proportionate part of the *ad valorem* stamp. *Re The Carlisle and Silloth Railway Company.* vol. 33, p. 253

24. Four distinct railway companies took portions of the land of a college, and paid the purchase-money into Court. A portion of one fund had already been re-invested, leaving a balance in Court, and a petition was presented for re-investing the three other funds and a part only of such balance. Held, that the costs were payable by the four companies equally. *Re Merton College.* vol. 33, p. 257

25. Compensation-money was invested in Consols, and an application was afterwards made to re-invest it on a mortgage security. Held, under the Lands Clauses Consolidation Act, that the company must pay the costs, but that, in regard to future costs, it must be considered as a permanent security. *Re Lomax.* vol. 34, p. 294

26. A petition, presented by a tenant for life, for payment of the income of a fund paid into Court under the Lands Clauses Act, and which fund was the subject of an administration suit, was served on the trustees. Held, that the company must pay the trustees' costs. *Henniker* v. *Chafy.* vol. 35, p. 124

27. A railway company took lands belonging to a charity, and the Court authorized the investment of the purchase-money in waterworks. Held, that the company must pay the costs of a petition

for payment out of the purchase-money. *Re Lathropp's Charity.* vol. 35, p. 297

LAND TAX.

A person having a partial interest redeemed the land tax on three several tenements by one contract, at one price. Held, that the three charges were not consolidated so as to give him one aggregate charge on all tenements, but that he acquired three separate charges on the three several tenements. *Cox* v. *Coventon.* vol. 31, p. 378

LAPSE.

[*See* ACCELERATION, CONDITIONAL GIFT, GIFT TO A CLASS (SUBSTITUTION), RESULTING TRUST.]

1. Bequest of 600*l.* to be applied towards payment of the debt to which *Z. Chapel* was or might be subject at the testator's decease. The chapel was vested in trustees for a particular class of dissenters. The general body of that class had incurred a debt for building chapels, and 600*l.* were laid on *Z. Chapel*, which it was expected would be raised by voluntary subscription of the members, but there was no legal liability. Held, that the legacy failed. *Davies* v. *Hopkins.* vol. 2, p. 276
2. Where a gift of a portion of a residue fails, it belongs to the next of kin, and not to the other residuary legatees. Thus, where a testatrix gave one-third of the residue to *A.*, and another one-third to *B.*, and as to the other one-third thereof, gave 500*l.* to C., and the remainder thereof to *D.*, and *C.* died in the lifetime of the testatrix, it was held that the 500*l.* belonged to the next of kin, as undisposed of. *Lloyd* v. *Lloyd.* vol. 4, p. 231
3. Where there is no gift of the undisposed of residue, a testator cannot, by negative words, exclude one of his next of kin from participating in it. *Johnson* v. *Johnson.* vol. 4, p. 318
4. A testator, by his will, cut off his widow from any part of his property, and directed she should not receive any benefit therefrom, but he made no disposition of his property. Held, that she was nevertheless entitled to her share of the undisposed of residue. *Ibid.*
5. A testatrix, having the moiety of an estate, directed her executors to purchase the other moiety; and, "if the purchase should be completed within twelve months after her death," she gave the entirety on certain trusts; "but in case her executors should not be able," within that time, "to purchase it," she directed her moiety to be sold, and the produce, together with 1,100*l.*, to be held on other trusts. The will contained a gift of the residue of her estate of whatever kind, &c. The purchase "was not completed" within the time, although the executors "were able," so that neither of the expressed events happened. Held, first, that the trusts both of the estate and 1,100*l.* failed; and, secondly, that as between the devisees and heir-at-law, the latter was entitled to the testatrix's moiety of the estate. *Upjohn* v. *Upjohn.* vol. 7, p. 59
6. A bequest to the trustees of a chapel, "towards the reduction of their debt on that chapel," held to be payable to the trustees, though the debt incurred in building the chapel had long before been paid off, and the only debt since incurred was one owing by the trustees in respect of the chapel, but upon their own individual responsibility. *Bunting* v. *Marriott.* vol. 19, p. 163
7. Bequest of a quarter of a residue to *A.*, and on his death to his children, but if he should die without leaving lawful issue as aforesaid, then to *B.* and three other persons, and to the respective issue of such of them as should die leaving issue, such issue being intended to take the share which their parent would have taken if living. *A.* died in the lifetime of the testatrix without having been married. *B.* survived and had children. Held, that there was no lapse, but that one quarter of *A.*'s share passed to *B.*, who took it absolutely. *Johnston* v. *Antrobus.* vol. 21, p. 556
8. A testator authorized his trustees to apply any sum not exceeding 600*l.* in the purchase of church preferment for *A.* *A.* died before any sum had been so applied. Held, that the gift wholly failed. *Cowper* v. *Mantell.* (No. 2.) vol. 22, p. 231
9. A lady had a general power of appointing a trust fund by deed or will, and in default, half was limited to *A.* and the other to *B.* By her will, she appointed the fund to her executor and made it chargeable with her debts and some legacies, and she gave half the residue, composed of the appointed fund and her own property, to *A.* *A.* predeceased the testatrix and the bequest to him lapsed. Held, that the moiety appointed in favour of *A.* passed to the appointor's next of kin, as part of her estate undisposed of, and not to the executors of *A.* as in default of appointment. *Chamberlain* v. *Hutchinson.* vol. 22, p. 444
10. A testator bequeathed 1,500*l.* towards adding to the endowment of a church. By a codicil, he declared, that in consideration of it, his nephew and his heirs should have every third nomination of the clergyman. The bishop (who was the patron) refused to relinquish the patronage. Held, that the gift failed, and that

the 1,500*l.* fell into the residue. *In re Welstead.* vol. 25, p. 612

11. Bequest to each of *A.*'s sisters and brothers, or to such of them as may be living at the time of my decease, in case of those who may not be in existence at my death, to go to their respective descendants. Held, that the descendants of a sister who was dead at the date of the will were excluded. *Smith* v. *Pepper.* vol. 27, p. 86

12. Bequest to *A.* and *B.*, with benefit of survivorship; as to the moiety of *B.* at *B.*'s death to *A.*, her executors, administrators and assigns. Held, that *A.* and *B.* took as tenants in common, and *A.* having died in the testator's life that her share lapsed, and that *B.* took a life interest only in the other moiety, which fell into the residue on his death. *Paterson* v. *Rolland.* vol. 28, p. 347

13. Devise to five in fee, to be equally divided between them, "if more than one." One died in the testator's life. Held, that there was no lapse, but that the four survivors took equally. *Sanders* v. *Ashford.* vol. 28, p. 609

14. A testator appointed 10,000*l.* each to his younger children, and all the residue to his eldest son. And he directed the income of the whole, until the youngest should attain twenty-one, to be applied in the maintenance of the minors. In the event of a younger child dying under twenty-one, he appointed his share to the eldest son, "in addition to the residue." Held, that the share of a younger child who died under twenty-one was not payable to the eldest until the youngest child attained twenty-one. *Duffield* v. *Currie.* vol. 29, p. 284

15. Whether as to bequests to a child, who predeceases the testator, which are protected from lapse by the Wills Act (s. 33), the will of the child is to be construed as at the death of the parent or of the child, *quære.* *Re Mason.* vol. 34, p. 494

16. Gift of residue to widow for life, and afterwards to fifteen designated persons, "or their executors, administrators or assigns," and "to be absolutely vested" on the testator's death, and to be payable at twenty-one, provided the widow had died. Held, that the shares of two of the fifteen, who predeceased the testator, had lapsed. *Leach* v. *Leach.* vol. 35, p. 185

17. A testator bequeathed a fund to his nephew *A.* and the children of his late sister *B.*, as tenants in common; but, in case any died before the testator, leaving issue, his share was not to "lapse," but go to his executors as part of his personal estate. Three of the children of *B.* died before the testator and left no issue. Held, that there was no lapse, but that the whole went to the other members of the class. *Aspinall* v. *Duckworth.* vol. 35, p. 307

LAST ANTECEDENT.

[*See* CONSTRUCTION.]

1. A testator bequeathed the residue amongst his five grandchildren *A.*, *B.*, *C.*, *D.* and *E.*, his grandson *A.*'s two children *F.* and *G.*, and his niece's two children *H.* and *K.*; and declared, that "in case any of the said last-mentioned children should die before their attaining their respective ages of twenty-one and should leave no lawful issue, then the survivors were to have his or her share." *F.* died under twenty-one, and left no issue. Held, that his share became divisible between the eight surviving legatees, children and grandchildren. *Walker* v. *Moore.* vol. 1, p. 607

2. Bequest to *A.* for life, and after her decease to become the property of *B.*, "or, in case of her decease, to be equally divided between her children living." *B.* died in the testator's lifetime, and her only child survived her, but died in the life of *A.* Held, that the word "living" referred to the last antecedent, viz. the death of *B.*, and that such only child took a vested interest, and that her legal personal representatives were entitled to the legacy. *Hodgson* v. *Smithson.* vol. 21, p. 354

3. A devise, commencing with the word "Likewise," held to be subject to the contingency mentioned in the preceding gifts of the same estate. *Paylor* v. *Pegg.* vol. 24, p. 105

4. A testator devised one-fifth "share" of his freeholds to each of his five children in fee. He then bequeathed personal estate to them "share and share alike," and he said "should either of my children die without issue I give and bequeath such share and shares amongst my surviving children equally," and should either depart this life leaving children or child, then that child to "inherit his parent's share," and if more than one "the share" to be equally divided amongst their "heirs" and assigns. Held, that the gift over referred to the last antecedent, the personalty, and did not affect the realty. *Adshead* v. *Willetts.* vol. 29, p. 358

LAW (ACTION AT).

[*See* ISSUE AT LAW, QUESTION OF LAW AND FACT.]

LEASE.

[*See* LANDLORD AND TENANT, OPTION TO PURCHASE, RENEWABLE LEASEHOLDS, SETTLED ESTATES ACT.]

1. Lease of charity property for ninety-nine years at a fixed rent, containing no

contract to repair or lay out any money thereon, set aside. *The Attorney-General* v. *Foord.* vol. 6, p. 288

2. In an administration suit, the Court, upon the certificate of counsel will authorize a lease, without reference back to the Master to settle it. *Day* v. *Craft.* vol. 14, p. 219

3. *A.* granted *B.* a lease containing a covenant against assignment. *A.* afterwards agreed to cancel the lease, and to grant *B.* a much more beneficial one, "as a reward for the great improvement he had made in the estate, and as an encouragement for his general industry." *A.* died before executing the second lease, and *B.* filed a bill for specific performance against his representatives. A compromise was effected for granting a lease for a reduced term, "the lease to contain all covenants usual and ordinary in farming leases." It was insisted by the tenant, that under the compromise, there should be no restriction against assignment; but held, that the Master, in settling the lease, was to have regard to the original lease and to the custom as to farming leases, if any. *Bell* v. *Barchard.* vol. 16, p. 8

4. Demise for seven years, with a proviso, that, notwithstanding anything before contained, if notice should not be given to determine the lease at the end of the seven years, it should be considered a lease upon the same covenants, from year to year, until notice to determine it. Held, that the demise continued after the seven years until put an end to by notice, and that the covenants continued binding. *Brown* v. *Trumper.* vol. 26, p. 11

5. Covenant by farm tenant "well and substantially" to repair and keep in "good substantial repair," and so "well and substantially repaired" to yield up at the end of the term. Held, that the tenant was bound to give up the premises in as good a state of repair as when he took possession, and that they must be inferred to have been then in a tenantable state. The landlord having become changed during the term, and a claim for dilapidations being now made by the existing landlord. Held, that the tenant was entitled to an inquiry as to the state of repair when the present landlord's title accrued. *Ibid.*

6. Under an executory agreement to grant a lease of an hotel, with general and usual covenants, it was held, under the circumstances, that the lease ought to contain a power of re-entry on the lessee's becoming bankrupt or taking the benefit of the Insolvent Act. *Haines* v. *Burnett.* vol. 27, p. 500

7. The 5 & 6 *Vict.* c. 27, does not repeal the 13 *Eliz.* c. 10; and therefore a rector may demise his glebe under the statute of *Elizabeth*, though the lease may not be conformable to the restrictions imposed by the statute of *Victoria*. *Jenkins* v. *Green.* (No. 3.) vol. 28, p. 87

8. The Defendant agreed to grant the Plaintiff a coal lease for twenty-one years, the only rent reserved was dependent on the quantity raised, and was made payable quarterly. The Court held, on the construction of the contract, that the Plaintiff was bound to commence working immediately and to proceed continuously. *Sharp* v. *Wright.* vol. 28, p. 150

9. In the absence of any agreement on the subject, a person who agrees to take a house must take it as it stands, and cannot call on the lessor to put it into a condition which makes it fit for his living in. *Chappell* v. *Gregory.* vol. 34, p. 250

10. A proviso that a lessee shall not assign with the consent or the licence of the lessor, is not a usual covenant, and is not implied by the words, "the lease to contain all the usual covenants for protecting the interest of the lessor." *Backland* v. *Papillon.* vol. 35, p. 281

LEASEHOLDS (DEVISE OF).

[*See* WILL.]

1. A testator having devised the residue of his personal estate, whatsoever and wheresoever, to *A. B.*, devised all his manors, lands, &c. at *W.*, in the county of *Durham*, and at *B.*, in the county of *York*, and a parcel of land purchased of *M. L.*, and all other his real estates in the counties of *Durham* and *York* and elsewhere, and all his estate and interest therein to *C.* and *D.* and their heirs, to certain uses. Held, under the 1 *Vict.* c. 26, s. 26, that his leaseholds in *Durham* passed to *C.* and *D.* with the real, and not to *A. B.* with the personal estate. *Wilson* v. *Eden.* vol. 16, p. 153

2. Bequest of leaseholds to *A.* for life, and after her decease, to the issue of her body; and in case of her dying leaving no issue, then over. Held, that *A.* took an estate for life only. *Goldney* v. *Crabb.* vol. 19, p. 338

LEGACY.

[*See* ABATEMENT OF LEGACIES, ADEMPTION, DESCRIPTION OF GIFT, DESCRIPTION OF LEGATEE, EXECUTOR (LEGACY TO), GIFT TO A CLASS, LAPSE, LEGACY (ADEMPTION OF), LEGACY (TO DEBTOR), LEGATEE, PAYMENT (DEBTS AND LEGACIES), "PER CAPITA" OR "PER STIRPES," RESIDUARY BEQUEST, SATISFACTION, SUBSTITUTED LEGACY.]

1. A testator devised his estate *X.* to trustees, for sale, for payment of his debts

and legacies, in exoneration of his personal estate; and after reciting that he became entitled on his marriage to a sum of 7,442*l.* of which he had received 2,442*l.*, and that 5,000*l.* remained due, he bequeathed 2,442*l.* to be paid out of the produce of the estate *X.*, and the sum of 5,000*l.* when and if the same should be received and got in, but not otherwise, to *A.*, *B.*, *C.* and *D.* equally; and in case the 5,000*l.* should be received by him in his lifetime, he directed the same to be raised out of the estate *X.* The testator received the 5,000*l.* Held, that the legacy was demonstrative, and, that it was a charge upon the general personal estate as well as on the estate *X.* *Colvile* v. *Middleton.* vol. 3, p. 570

2. Bequest of 1,200*l.* to *A.* and *B.* upon trust to appropriate and apply, in two equal parts or shares to be divided, to and for the benefit of all their children respectively. Held, on the context, to give legacies of 600*l.* to each family severally. *Overton* v. *Banister.* vol. 4, p. 205

3. *A. B.* bound himself to pay 16,000*l.* on the death of the survivor of himself and wife, on certain trusts, under which, on a contingency, the amount was to revert to himself. *A. B.*, by his will, gave the 16,000*l.*, if it should revert to trustees, on trust to pay thereout 14,000*l.* to *C.*, and three legacies of 500*l.* each to charities, and "the remaining sum of 500*l.*" to the Foundling Hospital. His wife survived him nine years, and the sum of 16,000*l.* was invested in 25,702*l.* 3 per cents. In 1848 the contingency happened, when the fund reverted, and amounted to considerably more than 16,000*l.* Held, that the legatees were entitled to money legacies only, and not to the whole fund. *Loscombe* v. *Wintringham.* vol. 12, p. 46

4. *A.* bequeathed property amounting to 1,279*l.* to *B.* Subsequently *B.* after referring to the will of *A.*, and that he was desirous of making the following legacies to *A.*'s relations, bequeathed to them legacies amounting to 2,800*l.*; and proceeded—but if the property "I became entitled to under the will of *A.* should fall short and be deficient in paying such legacies, my desire is, that 500*l.* out of any other part of my persoual estate shall be paid and applied for that purpose." Held, that the legacies, though nominally amounting to 2,800*l.*, were limited to 1,279*l. plus* 500*l.*, and that they must therefore abate. *Read* v. *Strangways.* vol. 14, p. 139

5. Bequest of 10,000*l.* sterling, "being my share of the capital now engaged in the banking business," &c. Held, to be a demonstrative and not a specific legacy. *Sparrow* v. *Josselyn.* vol. 16, p. 135

6. The testator bequeathed to *C. W. C.* the full amount of whatever sum *H. H.* might be indebted to *C. W. C.* at the testator's decease. The testator added, "and it is my positive will, that the amount required for the payment of the same, whatever it may be, be taken out of the amount of that share to which *H. H.* becomes entitled to a life interest under my will." The share of *H. H.* proved insufficient to pay the debt. Held, that this was not a demonstrative legacy to *C. W. C.*, and that his debt could only be satisfied out of the assets so far as the share of *H. H.* therein would extend. *Coard* v. *Holderness.* vol. 22, p. 391

7. A testatrix having a power of appointment over her late brother's property, subject to the life interest of *A.*, by her will gave some legacies "out of her own personal estate," payable immediately after her decease, and other legacies "out of her brother's estate," payable on the death of *A.* She directed the duty on all the foregoing legacies to be paid, and charged them on the real estate. By a codicil she directed the second legacies to be paid immediately after her own death, and gave other legacies. Held, that on the will the second legacies were specific, but that on the codicil they were demonstrative. Held also, that all the legacies by the will and codicil were charged on the real estate, and payable duty free. *Williams* v. *Hughes.* vol. 24, p. 474

8. A testator, by his will, gave *F. B.* 80*l.* per annum, Long Annuities, to the year 1860, and a "Deferred Annuity" of 80*l.* from Christmas, 1859. By a codicil (which did not mention *F. B.*'s name) he said, I direct that my executors "make my Long Annuities of 80*l.*, instead of 80*l.*, be only 30*l.* per annum, and a reversionary annuity purchased on her life 30*l.*, as I have lately expended money on her account." Held, that *F. B.* was referred to, and that she was entitled to 30*l.* a year only. *Ellis* v. *Bartrum.* (No. 1.) vol. 25, p. 107

9. A testator bequeathed, first, to the minister of *M.* a sum of [*blank*] for educating the poor; secondly, an annuity of 5*l.* a year to *A.* for life, and after her death to the minister of *M.*, in addition to the sum of [*blank*] for educating the poor of *M.*; and thirdly, an annuity of 15*l.* to *B.* for life, and after his decease he gave to the minister of *M.* the said sum of [*blank*] in addition to the two sums before mentioned. Held, that the *corpus* producing the annuity was well given to the charity, subject to the life interests. *Hartshorne* v. *Nicholson.* vol. 26, p. 58

10. A testator desired that every legatee under his will should "contribute 1*l.* per

cent. out of their legacies to Mrs. *W.* and her children. Held, that the specific legatees and annuitants and residuary legatee (both in respect of the residuary personal estate and of the produce of real estate directed to be converted) were bound to contribute. *Ward* v. *Grey*.
vol. 26, p. 485

11. A testator said—"I leave my wife 200*l.* to dispose of as she may think proper, and the interest of the residue of my property, viz. the sum of 454*l.* 9*s.* 9*d.* for life." He subsequently stated that he had 200*l.* in the savings bank, and 454*l.* 9*s.* 9*d.* and 30*l.* in addition in another bank. His property consisted of the 454*l.* 9*s.* 9*d.* and 30*l.* and some furniture, and there was in the savings bank a sum of 200*l.* in his wife's name, being part of her separate estate. Held, that this latter sum was the 200*l.* referred to in the will. *Hesketh* v. *Magennis*.
vol. 27, p. 395

12. A testator bequeathed the income of his residue to his widow for life, but desired "that in case anything should occur that her income is not sufficient, she shall be at liberty to go to the principal." He gave the residue to his brothers. The residue only produced 30*l.* a year, and the widow claimed the whole capital. Held, that she was only entitled to so much of the capital as, with the income, would afford her a maintenance suitable to her station in life. *Re Pedrotti's Will*.
vol. 27, p. 583

13. A testator having contracted to purchase a real estate, devised it to his son *Andrew* and his issue, and he bequeathed his residue in moieties between his sons *Andrew* and *George*. But he directed that 10,000*l.* should be debited against *Andrew*'s moiety, as an equivalent for the real estate devised to him. Before the testator's death, the contract was rescinded. Held, that no deduction ought to be made from *Andrew*'s moiety of the residue. *Nugee* v. *Chapman*. (No. 1.)
vol. 29, p. 288

14. A testatrix, after stating that she was desirous of leaving certain legacies, requested her supposed husband to pay certain legacies out of his own estate. He predeceased her. Held, that the legacies were demonstrative, and payable out of the testatrix's estate. *Jones* v. *Southall*. (No. 2.)
vol. 32, p. 31

15. A testator by his will bequeathed 500*l.* to his widow, and by a codicil he bequeathed her "a further sum not exceeding 300*l.*, making altogether a legacy of 1,000*l.* given to her by my will and this codicil." Held, that there was a mere miscalculation, and that under the codicil the widow was only entitled to 300*l.* *Morgan* v. *Middlemiss*.
vol. 35, p. 278

LEGACY (ADEMPTION).

1. A testatrix, being liable to pay an annuity to *A.* for life, purchased an annuity during *B.*'s life, and effected a policy on *B.*'s life for 2,000*l.* By her will she recited, that on the death of *B.* 2,000*l.* would be recovered to her estate. In the event of *B.* dying in the life of *A.*, the executors were to provide *A.*'s annuity out of her estate. In the event of *A.*'s death before *B.*, she gave the purchased annuity to *C.*, he paying the premiums; and on the death of *B.* she gave to *C.* the 2,000*l.* *B.* died in the life of *A.* Held, that *C.* was not entitled to the 2,000*l.* *Leckie* v. *Hogben*.
vol. 7, p. 502

2. A testator bequeathed to *A. B.* his furniture, &c., which at the time of his death should be in the house he then occupied at *X.* The testator at his death had ceased to occupy that house, and had no furniture, &c. therein. Held, that the bequest failed. *Spencer* v. *Spencer*.
vol. 21, p. 548

3. A testator directed his furniture in *Gloucester Square* to be applied in payment of his debts, and in a subsequent part of his will he bequeathed his furniture in *England* to his sisters. The testator removed the furniture in *Gloucester Square* to another residence. Held, that it did not pass to his sisters. *Blagrove* v. *Coore*.
vol. 27, p. 138

LEGACY DUTY.

1. Pending a suit for the administration of assets, and before the accounts had been taken, the Attorney-General presented a petition for payment out of the assets, of a sum, which, under false representations, had been returned to the administrator as over paid in respect of probate duty, and for the legacy duty payable by the administrator on his share of the residue. The administrator had wasted the assets, and the widow, who was entitled to one-third, had not been paid. Held, that the application was premature, and the petition was dismissed.

In an administration suit, the Court provides for the payment of the legacy duty before payment to the legatee. *Hicks* v *Keat*.
vol. 3, p. 141

2. A testator gave his residuary estate in trust for his daughter for life, with remainder to such persons (other than *A.*, *B.* and *C.*, and their relations) as she should by will appoint, and in default, over; and if the daughter married or received visits from *A.* or any of his relations, then she was to forfeit her power. The daughter appointed the property by her will. Held, on her death, first, that under the Legacy Duty Act, she had a general and absolute power of appoint-

ment, and that, therefore, legacy duty was payable on the residue, under the first will; secondly, that no probate duty was payable on the probate of the daughter's will, in respect of such residue; and thirdly, that legacy duty was also payable on the same residue so appointed under the will of the daughter. *Platt* v. *Routh*. vol. 3, p. 257

3. Assignment of legacy in Court represented as "unincumbered" in trust to retain a moiety. Held, that such moiety must bear its share of the legacy duty, and of the costs of the proceedings to obtain payment. *Bliss* v. *Putnam*. vol. 7, p. 40

4. A testator devised real estate to *A.* subject to the payment of "one clear yearly rent-charge or annuity of 100*l.*" to *B.* Held, that *B.* took the annuity free of legacy duty. *Baily* v. *Boult*. vol. 14, p. 595

5. Under the acts of 1795 and 1805, no legacy duty is payable on the value of personal estate given up by one legatee to another under the doctrine of election; but where the testator devises his own real estate to *A.*, and bequeaths *A.*'s personal estate to *B.*, the legacy duty is payable on the value of the personal estate so charged on the testator's real estate. *Laurie* v. *Clutton*. vol. 15, p. 131

6. The Legacy Duty Acts are to be construed strictly, and in favour of the subject. *Hobson* v. *Neale*. vol. 17, p. 178

7. A will empowered the trustees, with the consent of *A.*, to sell the real estate, and invest a sufficient sum to answer two annuities. The rents being deficient to pay the annuities, the Court ordered a sale out of the produce, and 20,000*l.* Consols were purchased to provide for the annuities. Legacy duty being claimed on the *corpus* of the Consols, Held, that the validity of this claim depended on whether the sale had taken place under the general jurisdiction of this Court, or under the power in the will; and the Court having held the former, determined, that no legacy duty was payable. *Ibid.*

8. The testator directed legacy duty to be paid out of his general personal estate on the annuities and pecuniary legacies given by his will. Held, that the income of residuary personal estate directed to be invested in land and settled to uses was not, while uninvested, an annuity within such direction. *Lord Londesborough* v. *Somerville*. vol. 19, p. 295

9. A testator directed the investment of a sufficient sum "to raise and pay an annuity or clear yearly sum of 100*l.*," which was given to parties in succession. Held, that it was not free from legacy duty. *Pridie* v. *Field*. vol. 19, p. 497

10. Distinction between such a gift and a direct bequest of a "clear annuity." *Pridie* v. *Field*. vol. 19, p. 497

11. Request to trustees of 2,000*l.* Consols, to divide the income yearly between twelve poor persons, but no person to be eligible two years in succession. Held, liable to legacy duty. *In re Pearce*. vol. 24, p. 491

12. A specific fund was bequeathed for payment of debts. A claim being made in respect of a debt barred by the statute, the administrator offered 1,150*l.* as the price to be paid for a release of all claims. Legacy duty was claimed on this account. Held, that it must be borne by the administrator, and not by the creditor. *Greville* v. *Greville*. (No. 2.) vol. 27, p. 596

13. Bequest for poor persons, but no person to receive more than 5*l.* Held, that legacy duty was payable on the whole fund. *Harris* v. *Earl Howe*. vol. 29, p. 261

14. Bequest of legacy "free from any charge or liability in respect thereof." Held, that it was given free from the legacy duty. *Warbrick* v. *Varley*. (No. 1.) vol. 30, p. 241

15. A testator gave his residue, in trust to convert and divide into two equal parts, and he bequeathed one equal part to *A.*, free from any duty in respect thereof, and the other equal part to be given to his nephews [but without the addition of the latter words]. Held, that the legacy duty on the first moiety was payable out of any lapsed residue, and if none, out of the second moiety. *Ibid.*

16. A testatrix bequeathed a legacy of 6,000*l.* She afterwards, in a separate sentence, said, "I also give and bequeath the several legacies hereinafter mentioned," [specifying them], "all which legacies I direct to be free from legacy duty." She then proceeded, "I also give *E. R.* 200*l.*, *T. C.* 4,500*l.*," &c. &c., "all which said legacies I direct shall be paid free of legacy duty." Held, that the 6,000*l.* was not included in the legacies given free of duty. *Fisher* v. *Brierley*. (No. 1.) vol. 30, p. 265

17. By a will some legacies were given free of duty, and their amounts were varied by a codicil. Held, that they were still exempt from duty. *Fisher* v. *Brierley*. (No. 2.) vol. 30, p. 267

18. A testator devised real estate to trustees in trust by sale or mortgage to raise 20,000*l.*, and subject thereto he devised the estate to his son. The trustees sold part of the estate, but, before the contract had been completed, the trustees were paid, and the estate was conveyed to the son, who adopted the contract. Held, that legacy and not succession duty was payable on the purchase-money. *Earl Howe* v. *Earl of Lichfield*. vol. 35, p. 370

LEGACY TO DEBTOR.

[*See* SATISFACTION.]

1. A testator bequeathed to his daughter and her husband 300*l.*, and directed, if the husband should be indebted to him at the time of his death, the debt should be deducted out of his legacy. The husband died in the lifetime of the testator, indebted to him in 250*l.*, and the testator afterwards died. Held, that the debt was not to be deducted from the daughter's legacy. *Davis* v. *Elmes.* vol. 1, p. 131
2. A testator, who had lent money to his son *John*, bequeathed his residuary estate to *John* and his other children equally for life, with remainder over to their children, and he declared, that neither of his children should receive anything until they should have accounted for any sum lent by him to them. The testator afterwards agreed to accept a composition on his debt, but which was not paid at his death. *Semble*, that the son was only liable to account for the composition; but held, that the son's debt was not to be deducted from his children's interest. *Silverside* v. *Silverside.* vol. 25, p. 340
3. By his will the testator divided his property between his son and two married daughters, and he declared, that the debts due to him from his son and his two sons in law should be "paid or accounted for to his executors," before his children should receive any part of his estate. By a codicil he cut down his son's interest to a life estate, and gave interests in his share to his wife and children. Held, that the son was not bound to pay his debts for the benefit of his wife and children, but only to bring the amount into hotchpot as regarded his two sisters. *White* v. *Turner.* vol. 25, p. 505
4. A testatrix, after referring to a debt due from her to a partnership of *A.* and *B.* deceased, bequeathed a fund "upon trust to pay and divide the produce of such stock to and for the benefit of their respective estates." *A.* and *B.* were not partners, but one was the successor of the other. The sum of 4,517*l.*, was claimed by *A.*, and 197*l.* by *B.* against the testatrix's estate. Held, that the fund was divisible between their estate equally, and not in proportion to the debts due to *A.* and *B.* respectively. *Greville* v. *Greville.* (No. 1.) vol. 27, p. 594

LEGATEE'S SUIT.

[*See* DESCRIPTION OF LEGATEE.]

1. Under a decree in a legatee's suit to take the usual accounts. *A. B.* went in and claimed the residue which the Master found him entitled to; but the residue was not then ascertained, and no order was made in respect of it. Held, that *A. B.* was not precluded from afterwards asking relief against the executor, in respect of an alleged breach of trust, in a suit of his own, he not having, in the first suit, been in a situation to investigate the accounts of the executor, or to claim the relief which he asked in the second. *Guidici* v. *Kinton.* vol. 6, p. 517
2. A legatee has a clear right to have a satisfactory explanation of the state of the testator's assets, and an inspection of the accounts, but he is not entitled to a copy thereof at the expense of the estate, *Ottley* v. *Gilby.* vol. 8, p. 602
3. Legatees and annuitants are bound by the proceedings in a suit for administration, between the executors and residuary legatees and devisees; although there may be a question as to the debts being primarily charged on the real estate, and which may incidentally affect them. Therefore, after decree in such a suit, legatees cannot sustain an administration suit against the executors. *Jennings* v. *Paterson.* vol. 15, p. 28
4. After a decree for administration, a legatee cannot sue the debtors to recover the assets, in the absence of any refusal or neglect of the personal representatives to do so. *Stainton* v. *The Carron Company and Others.* vol. 18, p. 146
5. After a decree for administration, a residuary legatee filed a bill against the executors, and a company, in which the testator was a large shareholder, and with which he had had extensive transactions, to recover the assets, relying on the fact that the executors were shareholders and officers of the company, and had interests which conflicted with their duty. A demurrer of the company was allowed, it not being shewn that the executors intended to neglect the performance of the duties of their office. *Ibid.*

LEGAL ESTATE.

1. The legal estate was presumed to be vested in the persons to whom it was purported to be conveyed, notwithstanding some irregularities. *Attorney-General* v. *Dalton.* vol. 13, p. 141
2. As to the protection afforded by getting in the legal estate from a trustee. *Prosser* v. *Rice.* vol. 28, p. 68

LEGAL PERSONAL REPRESENTATIVE.

1. Bequest to *A.* or his legal representatives. *A.* was dead at the date of the testator's

will, having bequeathed his property on particular trusts. Held, that *A.*'s next of kin, according to the Statute of Distributions, were entitled to the fund. *Cotton* v. *Cotton.* vol. 2, p. 67

2. The expression "personal representatives" and "legal representatives" have, in some cases, been held to be of identical meaning, but they are not necessarily so. *Kilner* v. *Leech.* vol. 10, p. 362

3. A testator, after the death of his daughter, gave real and personal estate to her "legal personal representative or representatives," to hold to them, their "heirs," executors, &c., according to the nature of the property. She left a husband, who took out administration, and an only child. Held, that the husband took both the real and personal estate. *Dixon* v. *Dixon.* vol. 24, p. 129

4. Gift to "legal personal representatives share and share alike." Held, to mean next of kin. *King* v. *Cleaveland.* (No. 1.) vol. 26, p. 26

5. Bequest to *A.* and his wife for their lives and, after their decease, in trust for their children "then living, or their legal personal representatives, share and share alike." A daughter died in the life of the testator, without leaving issue. Held, that her next of kin were entitled, and not her husband who had taken out administration to her. *King* v. *Cleaveland.* (No. 2.) vol. 26, p. 166

LEGITIMACY.

On a question of legitimacy, it appeared that the child had been born three months after the marriage. It was suggested, that the wife had not seen the husband until immediately before the marriage, and at the period of conception he was married to another person. In the cross-examination of the mother it was proposed to ask her "how long she had known her husband before her marriage." This question was objected to, but the Court allowed her to be asked, "when did you first become acquainted with your husband?" and she having answered, twelve months before her marriage, the Court would not permit the subject to be further pursued. *Anon.* v. *Anon.* vol. 22, p. 481

LIBRARY.

A library of books held to pass, upon a general intention that the testator's house should not be dismantled but kept up for his family. *Ouseley* v. *Anstruther.* vol. 10, p. 462

LIEN.

[*See* FOLLOWING ASSETS, &c., SOLICITOR'S LIEN, SPOLIATION.]

If the consignee of a cargo, by agreement with the owner, charter a ship, and expend the money necessary and proper in order to enable her to fetch the cargo, he is, without any special agreement to that effect, entitled to a lien on the proceeds of such cargo in his hands for the advance so made, and a person who is not the consignee has, under such circumstances, a similar lien on the proceeds of the cargo, if he can arrest such proceeds before they come to the hands of the shipper of the cargo. *Young* v. *Neill.* vol. 32, p. 529

LIEN (VENDOR'S).

1. Under a settlement, the husband became entitled to a life interest in funds, and he covenanted to pay, after his death, an annuity to his widow and portions to his children. He became bankrupt. Held, that his life interest could not be impounded to secure the performance of his covenant. *Duncan* v. *Cannan.* vol. 18, p. 128

2. *A.* and B. were joint owners of a house, and *A.* had laid out on it moneys he had obtained from *B.* Held, that *B.* had no lien on the house for the amount. *Kay* v. *Johnston.* vol. 21, p. 536

3. A father, the equitable owner of a small bit of land, erected a granary thereon; he afterwards allowed his two sons to use and occupy them, and they erected other buildings thereon at a great expense. Held, under the circumstances stated by the father in his answer, that the sons had a lien on the premises for their outlay. *The Unity Joint Stock Mutual Banking Association* v. *King.* vol. 25, p. 72

4. The rebuilding of a dissenting chapel was entrusted to three of the several trustees in whom the estate was vested. There being a deficiency of money, they borrowed on a deposit of the title deeds of the chapel, 500*l.*, which they personally engaged to pay. Interest was, for a long time, paid out of the chapel funds, but ultimately, the representatives of the trustees were compelled to pay the money. The legal estate was vested in new trustees. Held, that the representatives of the persons who had paid the 500*l.* had a lien on the deeds, but that they were not entitled to a decree for foreclosure or sale, as by granting such relief the trust would be altogether destroyed. *Darke* v. *Williamson.* vol. 25, p. 622

5. The Plaintiffs were merchants in *London* and *Melbourne.* The Defendant consigned goods to the *Melbourne* house, on an agree-

ment that the advances made to him by the Plaintiffs in *London* and *Melbourne* should be retained out of the proceeds of the goods, and that the surplus should be handed over to the Defendant. The *Melbourne* house remitted to the Defendant a sum as the balance, but omitted to retain the advances made in *London*. Held, that the Plaintiffs had merely a right of lien or of retainer which they had abandoned by remitting the balance, and a bill to make the remittance available for their debt was dismissed. *Bligh* v. *Davies*.
vol. 28, p. 211

LIFE ESTATE.

[*See* ABSOLUTE INTEREST, SUCCESSIVE INTERESTS.]

1. A testator directed his widow "to be in possession of all his furniture, plate, glass and books, and, for the time of her natural life, to receive the yearly interest and profits of all his property that he was in possession of at his death." Held, that the widow took a life interest only in the furniture, &c. *Low* v. *Carter*.
vol. 1, p. 426

2. Bequest of money and leaseholds to a *feme sole* "for her own absolute use, without liberty to sell or assign during her life." Held, that she took the property absolutely, without power of disposition during her life. *Baker* v. *Newton*. *Newton* v. *Richards*. vol. 2, p. 112

3. *A.* having a power of revocation and new appointment over an estate, of which *B.*, his heir, was tenant in tail, by his will directed the estate "to be attached to his title as closely as possible." Held, that the estate of *B.* and all other tenants in tail in *esse* at *A.*'s death (being in the line of the title), were abridged to estates for life only. *Lord Dorchester* v. *The Earl of Effingham*. vol. 3, p. 180, n.

4. Bequest of leaseholds, after prior life estates, to *A. B.*, her executors, administrators and assigns, during the term of her natural life. Held, on the context, to give a life estate only. *Morrall* v. *Sutton*. vol. 4, p. 478

5. Bequest of leaseholds to *A.*, her executors, administrators and assigns for her life. Held, on the context, to give a life estate only. *Morrall* v. *Sutton*.
vol. 5, p. 100

6. Devise to *A.* for his life, and, from and after his decease, "unto all and every the issue of the body of the said *A.*, share and share alike as tenants in common, and the heirs of such issue." Held, that *A.* took an estate for life only. *Greenwood* v. *Rothwell*. vol. 6, p. 492

7. Devise to *A.* for life, with remainder to her first child and his or her heirs; but if such child should die under the age of twenty-one years without leaving issue, then in like manner to the second, third, and every other child of *A.*, regard being had to their seniority, and to their respective deaths under age without leaving lawful issue; for, in case of issue, it was the testator's will that they should inherit the estate, and he thereby gave the same to him or her, and to his or her heirs accordingly. But in case *A.* died without leaving issue of her body, or, having issue, such issue should die under the age of twenty-one without leaving issue, then he devised the estate over. *A.* never had any issue. Held, that she took a life estate only. *Goymour* v. *Pigge*.
vol. 7, p. 475

8. Bequest of personal estate to *Charles*, "and to his first and other sons after him, in the usual mode of succession." Held, that *Charles* took for life only. *Sparling* v. *Parker*. (No. 3.) vol. 9, p. 450

9. A testator bequeathed ten *Pelican* shares to his son, and his heirs, executors, administrators, and assigns for ever, "he paying the profits of eight to the testator's daughters for life; and after their decease, the daughters' shares were to return to his son and his issue;" and, "in default of such issue," there was a gift over to the "daughters and their issue." Held, that subject to the life interest of the daughters, the son was absolutely entitled to the shares. *Hodges* v. *Harpur*. vol. 9, p. 479

10. A testator willed that certain property should be vested in a manner most secure, and least liable to fluctuation or risk; and that 3,000*l.* should be at the will of his wife at her death, but the residue he willed his wife should distribute to his relations. He made his wife residuary legatee. Held, that the distribution to the relations was not to take place until the wife's death, and the Court inclined to the opinion that the wife took a life estate by implication, but held that, at all events, she was entitled for life under the residuary gift to her. *Hudleston* v. *Gouldsbury*.
vol. 10, p. 547

11. Bequest to the children of *A. B.* for life; but in case of death before marriage, his share to go to the survivors. In the margin was written, "what is to become of the principal? The share of the parent to be divided amongst the children, if any. *Quære*, to be put in afterwards in a proper manner." The children of *A. B.* all died unmarried. Held, that the gift was for life only, and not an absolute gift cut down merely to admit their children. *Kay* v. *Winder*. vol. 12, p. 610

12. A testator, by his will, gave a legacy to his daughter for life, for her separate use, with remainder to her children. By a codicil, headed as "instructions to his

solicitor," to add to his will, he gave another legacy "to his daughter and children, for their sole use and benefit, &c. &c.," and one-third of the residue "to his daughter and children for their sole use and benefit." Held, that the daughter took a life interest in the gifts by the codicil. *Cator* v. *Cator*. vol. 14, p. 463

13. Conveyance of real estate to a trustee in fee, in trust for one for life, and afterwards to her children equally. There being no limitation to their heirs, held that the children took for life. *Holliday* v. *Overton*. vol. 14, p. 467

14. By a settlement made on the marriage of a widow, having children, real estate was conveyed by her to a trustee and his heirs upon trust for her separate use for life, with remainder in trust for her children as tenants in common (omitting the limitation to their heirs). Held, that they took life estates only. *Holliday* v. *Overton*. vol. 15, p. 480

15. The rule, that the estate of the *cestuis que trust* is commensurate with that given to the trustees, is inapplicable to limitations in a deed; therefore, where an estate was limited to trustees in fee, but the trust in favour of the *cestuis que trust* wanted the ordinary words of inheritance, Held, that they took life estates only. *Ibid.*

16. In a gift to *A.* (without any limitation of interest), "and if he should happen to die leaving lawful issue," then to such issue, the contingency has reference to the death of *A.* and not to that of the testator. *A.* therefore does not take an absolute interest. *Gosling* v. *Townshend*. vol. 17, p. 245

17. A testator bequeathed the residue to three trustees and their heirs, in trust for his daughter for life, with remainder over. He afterwards struck out the names of his trustees and substituted that of his daughter. A fac-simile probate was granted. Held, that the daughter took an estate for life only. Held also, that a construction must be put upon the whole will as it stood, for to neglect any part of it would be taking upon the Court itself the province of a Court of Probate. Held, moreover, that the several parts of the will were not inconsistent, and might well be read together. *Shea* v. *Boschetti*. vol. 18, p. 321

18. A bequest of the interest of the residue to the use of "*A.* and his wife for their lives," with remainder over. Held, that the wife, who survived her husband, was entitled for her life. *Moffatt* v. *Burnie*. vol. 18, p. 211

19. A wife appointed 5,000*l.* to her daughter, but if she had a fortune of 25,000*l.* (over which the husband had a power of appointment), then she desired the 5,000*l.* to be divided between her son and daughter, desiring that her husband should have a life interest therein. Held, that the husband took a life estate at all events. *Darby* v. *Darby*. vol. 18, p. 412

20. A testator, in the first instance (as was held), devised freeholds to his three daughters equally, in fee, and he further willed the several shares to his three daughters as before mentioned to have the interest for their use during their natural lives, and afterwards devised equally amongst their children, and, for want of children, to go to their husbands, if living. Held, that the daughters took an estate for life, and in default of children, their husbands, if living, took the fee. *Bentley* v. *Oldfield*. vol. 19, p. 225

21. A gift of real and personal estate to trustees, upon trust as to one-fifth for each of the testator's five children for life, and after his or her decease, for his or her children, which he or she should leave at his or her decease; and if he or she should leave none, in trust for the other children for life, and after the death of all the children, in trust, as to the *corpus*, for all the grandchildren of the testator *per capita*. One child died leaving a child who died before the last of the testator's children. Held, such child took an estate for his own life only, that that one-fifth was undisposed of until the death of the surviving child, and that cross-remainders were not, in the event which had happened, to be implied. *Rabbeth* v. *Squire*. (No. 2.) vol. 19, p. 77

22. A testator, seised of property in fee, devised it (by description), with all outbuildings, &c. "according to the tenor of the testator's deeds," without any superadded words of inheritance. The Statutes of Wills being inapplicable, Held, that the devisees took life estates only. *Sturgis* v. *Dunn*. vol. 19, p. 135

23. A testator devised freeholds in terms which gave life estates to his children equally, and unto the children of such children as might be dead, who were to take their parents' share only. Held, that the life estates of the children were not enlarged by the substituted gift. *Ibid.*

24. A testatrix bequeathed a legacy to *A.*, his executors, &c., "but in case he should die leaving lawful issue," she bequeathed it to *A.*'s children. *A.* survived the testatrix. Held, that *A.* took a life interest only. *Johnston* v. *Antrobus*. vol. 21, p. 556

25. Bequest to a married woman "for the benefit of herself and such children as she then had or might thereafter have by her then husband, free from the control of her husband." Held, that she took for life, with remainder to such children. *Jeffery* v. *De Vitre*. vol. 24, p. 296

26. A testator bequeathed the residue to trustees, upon trust to permit his wife to receive the annual produce during her life, and also to apply to her own use such parts of the capital as she should think proper, and after her decease to stand possessed thereof, upon trust for such persons as she should by will appoint, and in default upon trust to pay certain legacies. Held, that the widow took a life estate only, with power of disposition of the capital during her life and of appointment by will, and not an absolute interest. *Scott* v. *Josselyn.* vol. 26, p. 174

27. Bequest of leaseholds to *A.* for life, and at her death, to *B.* and her children; but if they should die without issue, to *C.* *B.* had no children at the death of the testator or in the lifetime of *A.* Held, that *B.* took for life, with remainder to her children. *Semble*, that *Wild's* case (6 *Co. Rep.*) does not apply to personalty. *Audsley* v. *Horn.* vol. 26, p. 195

28. Bequest "to *A.* and her children," expressed in another part of the will as a gift "to *A.* and her family." Held, that *A.* took for life. *Ward* v. *Grey.* vol. 26, p. 485

29. By a marriage settlement, real estates were conveyed to trustees "and their heirs," upon trusts for the parents for life, and afterwards for the children, and in default, as the wife should appoint, and in default, for her next of kin. The gift to the next of kin contained no words of inheritance. Held, that they took for life only. *Lucas* v. *Brandreth.* (No. 2.) vol. 28, p. 274

30. Devise to *A.* for life, with remainder to his first son who should attain twenty-one, in fee, and, in default, to all his daughters in fee; but in the event of *A.* dying without any issue male who should attain twenty-one, or any issue female, then over. Held, that *A.* took for life only, and that his estate was not enlarged by the gift over in default of issue. *Sandars* v. *Ashford.* vol. 28, p. 609

31. Bequest to *A*, with a direction that if she should leave children, "to be left to them." Held, that this was a gift to the children of *A.* who survived her in joint tenancy. *Noble* v. *Stow.* vol. 29, p. 409

32. *A. B.* conveyed freeholds to trustees and their heirs, in trust for his wife during widowhood, and afterwards on trust to convey and divide "such estate and premises" amongst the children and the issue of their children who should be then living as tenants in common (the issue of any deceased child to take their parents' share). Held, first, that "issue" must be read children, and secondly, that the children and their issue took life estates only. *Tatham* v. *Vernon.* vol. 29, p. 604

33. In the will of a testator, who died in 1804, he devised real estate to his daughter for life, with remainder to her sons successively in tail, with remainder to her daughters as tenants in common [without words of limitation], and, "in default of such issue," to his son in fee. Held, that, contrary to the decision in *Doe* v. *Taylor* (10 Q. B. 718), the daughters took for life only. *Re Richard Arnold's Estate.* vol. 33, p. 163

34. Held, that a devise for life contained in a will could not be enlarged by a recital in a codicil that such devise was in tail. *Ibid.*

35. Devise of "my moiety" of closes at *L.*, Held, insufficient, prior to the last Wills Act, to pass the fee. *Ibid.*

36. Bequest of 140*l.* to *A. B.*, the interest to be paid to her during her life, and at her death to be paid to her children, followed by the appointment of a trustee and by a direction (not limited to her life) to pay her the interest. Held, that *A. B.* took a life interest only, and not an absolute interest subject to the gift to her children. *In re Graham's Will.* vol. 33, p. 479

LIFE TENANT AND REMAINDERMAN.

[*See* CAPITAL AND INCOME, CONVERSION OF ASSETS, PERISHABLE PROPERTY, RENEWABLE LEASEHOLDS, WASTE.]

1. Amount of the expenses of draining ordered to be paid out of a fund to which the infant tenant for life was absolutely entitled, in lieu of charging the land. *Stanhope* v. *Stanhope.* vol. 3, p. 547

2. A testator gave his real and personal estate to trustees, in trust to permit his wife to receive "the annual produce, interest, rents, and profits thereof," for life; and after her death, in trust to stand seised and possessed of the said real and personal estate for *A.* and *B.* And he directed his trustees to carry on his partnership trade, in which he was engaged, or such part as they should think proper, for the benefit of his wife and those in remainder. Sir *John Leach* held that the widow was entitled to any increase in the value of the testator's capital, which took place between the death and the expiration of the partnership; but the decision was reversed by Lord Brougham. *Mousley* v. *Carr.* vol. 4, p. 49

3. Part of a residuary estate, settled on one for life, with remainder to her issue, consisted of life annuities and policies on the lives for securing the principal money. The Court seeing it for the benefit of all parties, refrained from ordering a sale, but directed the policies to be

kept up, so as to secure the principal, and that the surplus annuities should be paid to the tenant for life. *Glengall* v. *Barnard.* vol. 5, p. 245

4. A testator gave 400*l.* a year to his wife if she recovered her mental faculties, otherwise 200*l.* a year, and to be paid out of his government stock; and he directed, as soon as conveniently might be after her death, the investment of the stock out of which the annuity was payable, in land to be conveyed in strict settlement. The wife did not recover. Held, that the extra 200*l.* a year became part of the residue to be invested, and did not belong to the tenant for life. *Ibid.*

5. Tenant for life paying off charge on settled estate entitled to the benefit of the charge. *Burrell* v. *The Earl of Egremont.* vol. 7, p. 205

6. Tenant for life paying off charge on settled estate, but taking no steps for more than twenty years to keep it alive, the Statute of Limitations held not to apply. *Ibid.*

7. A testator devised his estates, in trust, after deducting out of the rents, taxes, repairs, "*improvements*," &c., and "all other necessary outgoings, to divide the surplus between *A. B.* and other persons for life. Held, that an expenditure for new farm buildings, &c., not stated to be with a view of improving the rents or to secure the continuance of the old tenants, was not within the term improvements. *Walpole* v. *Boughton.* vol. 12, p. 622

8. A testator directed his real estate to be sold, "immediately, or as soon as conveniently might be," and applied in aid of his personal estate, in payment of his debts; but until the settlement should be made as after directed, the rents were to be applied in keeping down the mortgages, and the residue to be paid to the persons entitled under the settlement. He then directed the unsold hereditaments to be settled on *A.* for life, with remainder over. The testator was greatly indebted, on bonds, and his personal estate was largely deficient. More than a year elapsed before the sale of the real estates. Held, that the interest on all the debts for the first year was payable out of the *corpus* of the real estate, but that the tenant for life was bound to keep down the subsequent interest. *Greisley* v. *The Earl of Chesterfield.* vol. 13, p. 288

9. A legacy was, after certain limitations, "to revert to the possessor of the estate." Held, that the tenant for life of the estate took it absolutely. *Mangin* v. *Mangin.* vol. 16, p. 300

10. The tenant for life under a settlement voluntarily expended moneys in erecting necessary buildings on the trust property. He also paid the expenses of the investment of the trust funds in law. Held, that his executors could not set off this outlay as a satisfaction *pro tanto* of a covenant on his part to pay 3,000*l.* to the trustees of the settlement. *Horlock* v. *Smith.* vol. 17, p. 572

11. Under a power, a tenant for life in possession charged the estate with 20,000*l.* and interest. The rents were insufficient to pay the interest, and the tenant for life paid the deficiency out of his own moneys. Held, that neither the tenant for life, nor those claiming under him, were entitled to charge the amount of the deficiency of the rents to pay the interest on the *corpus* of the estate. *Lord Kensington* v. *Bouverie* (*reversed*). vol. 19, p. 39

12. The Plaintiff was tenant for life of Consols, which were subject to a trust to be invested in real estates. The trustees, in *November*, entered into a contract for the purchase of a large real estate, to be completed on the 6th of *January*, from which time the purchasers were entitled to the rents. In consequence of the bank books being closed between the 14th of *December* and the 16th of *January*, the trustees, to enable them to complete, sold the Consols on the 26th of *November*, to be delivered on the 12th of *December*. Held, that the tenant for life was entitled to be paid, as income on the Consols, the difference between the price obtained and the value exclusive of the next dividend. *Lord Londesborough* v. *Somerville.* vol. 19, p. 295

13. Mode of calculating the amount to be received by the tenant for life, and of regulating the relative rights of the tenant for life and remainderman, where trustees neglected to convert a reversionary interest, so that the tenant for life received nothing until it fell into possession. *Wilkinson* v. *Duncan.* vol. 23, p. 469

14. A testator bequeathed life annuities payable from his death, and he directed a fund to be set apart to secure them. He also gave one-half of the residue of his personal estate to his widow absolutely, and the other half to other parties for life, with remainders over. By a codicil, he postponed the payment of the annuities until the death of the wife. Held, that the intermediate dividends of the fund set apart to answer the annuities constituted, as between the tenants for life and those in remainder, income and not *corpus*. *Cranley* v. *Dixon.* vol. 23, p. 512

15. Held, that it was not proper to keep up the mansion on a settled estate, as a residence, during the minority of the tenant for life. *Bennett* v. *Wyndham.* vol. 23, p. 521

16. By partnership articles, the testator's capital was to remain in the concern for

eighteen months after his death. The tenant for life of the residue was held, upon the terms of the will, entitled to the profits made during that period. *Bennett* v. *Wyndham.* vol. 24, p. 275

17. A testator gave 16,000*l.* in legacies payable within six months, and the residue to his widow for life, with remainder over. He died possessed of a large sum in the Consols. The widow, who was executrix, received the first half-yearly dividends on the stock, before she sold stock to pay. Held, that she was not entitled, as tenant for life, to these dividends on the stock producing the 16,000*l.*, but that it formed *corpus.* *Holgate* v. *Jennings.* vol. 24, p. 623

18. The fines, fees and expenses of the admission of new trustees to copyholds must be borne by the tenant for life and those in remainder, in proportion to their respective interests. *Carter* v. *Sebright.* vol. 26, p. 374

19. A testator gave four shares to his wife. He afterwards said—"Should the four shares be sold, the purchase-money is to be placed in the funds and she is to have the interest thereof during her natural life; but should she not sell the shares, whatever sum may annually accrue from them, beyond 200*l.*, is to be reserved, as a kind of sinking fund for the protection of those four shares in the *Globe* newspaper. At her decease, the whole of the property arising from the shares or from their sale to be divided between *M.* and *L.*" His widow was not an executrix. Held, that the widow had either a power to sell, or a right to call for a sale of the shares. Secondly, that a large fund, which had accumulated from income beyond 200*l.* a year, and which was not required for the protection of the shares, did not belong to the widow, but formed *corpus.* *Varlo* v. *Faden.* vol. 27, p. 255

20. Trustees, without authority, lent trust moneys at interest at 5*l.* per cent. Held, that the tenant for life was entitled to the whole interest, and that the remainderman had no right to insist that the excess of the interest beyond the dividends which would have been produced if the money had been invested in Consols formed capital. *Stroud* v. *Gwyer.* vol. 28, p. 130

(But see *Baynard* v. *Woolley.* vol. 20, p. 583)

21. Leaseholds bequeathed to one for life, with remainder over, were taken by a railway company, and the purchase-money was invested in Consols. The tenant for life only received the dividends. Held, on her death (her representatives assenting to take it), that her estate was entitled, out of the Consols, to the difference between the dividends received and the aggregate amount of the rental which would have accrued during her life, if the premises had not been taken. *Jeffreys* v. *Connor.* vol. 28, p. 328

22. A testator devised estates in trust for his wife for life, and he gave the trustees a discretionary power of sale. Part of his estate consisted of unproductive building ground, which remained unsold for some years. Held, that the tenant for life was only entitled to the actual rents of the property until sold; but that she would have been entitled to interest on the value, if the trust for sale had been absolute. *Yates* v. *Yates.* vol. 28, p. 637

23. A tenant for life had expended on the estate large sums—I. In completing a mansion left unfinished by the testatrix. II. In erecting a conservatory and vinery. III. In rebuilding a farm-house and buildings. IV. In erecting cottages. V. In erecting permanent furnaces, works, buildings and cottages at some copper works. VI. In draining marshy ground; and VII. In making payments to keep a foreign mine working, so as to prevent its forfeiture. Held, that he was entitled to no allowance for these sums out of the personal estate of the testatrix held upon similar trusts, or to any inquiry respecting them, except those laid out in completing the mansion and for the foreign mine, as to which an inquiry was directed whether the outlay was for the benefit of the inheritance. *Dent* v. *Dent.* vol. 30, p. 363

24. Dividends in a public company, earned before the testator's death, but declared afterwards, form income and not *corpus.* *Bates* v. *Mackinley.* vol. 31, p. 280

25. Moneys expended by tenant for life towards inclosing. Held, to be a charge on the allotments. *Vernon* v. *Earl Manvers.* vol. 31, p. 617

26. As between tenant for life and remainderman, the interest on the testator's debts must be borne by the income as from the day of his death. *Barnes* v. v. *Bond.* vol. 32, p. 653

27. For a long series of years, the manager of a public company had fraudulently retained large sums, whereby the dividends declared, from time to time, were much less than they otherwise would have been. After his death, a considerable sum was recovered by the company from his estate, in respect of his defalcations, and thereupon the company declared a large bonus. Held, as between the tenant for life and remainderman of some shares, that the bonus belonged solely to the person entitled to the shares at the time it was declared. *Edmondson* v. *Crosthwaite.* vol. 34, p. 30

28. Rents and royalties of brickfields, one of which had been leased by the testator and the other by the trustees of his will

under a power. Held to belong to the tenant for life. *Earl Cowley* v. *Wellesley.* vol. 35, p. 638

29. The produce of gravel, loam, &c., sold by the trustees according to the course pursued by the testator. Held income and not *corpus.*

Fines for admission received by the trustees of a manor upon grants of parts of the waste. Held to belong to the tenant for life. *Earl Cowley* v. *Wellesley.* vol. 35, p. 640

30. Preliminary fines received on enfranchising copyholds by reason of the admission having taken place before *July*, 1853, as is mentioned in the Copyhold Act, 1852 (15 & 16 *Vict.* c. 51). Held to belong to the tenant for life. *Ibid.*

31. Expense of fencing waste lands of a manor granted to a trustee for the benefit of the estate. Held payable out of *corpus.* *Ibid.*

32. Costs of trustees of rendering the necessary accounts for the purpose of paying the succession duty in respect of the life estate. Held payable by the tenant for life. *Ibid.*

LIMITATION OF GIFT.

1. Absolute interest cut down to a life interest for a limited purpose, held to remain absolute upon failure of that purpose. *Winckworth* v. *Winckworth.* vol. 8, p. 576

2. A testator, by virtue of a power, appointed a fund to trustees for his four children, in four equal portions and subject to the trusts thereinafter contained respecting his own residuary estate. Some of those trusts were to the children for life, with remainder to their children, and (as regarded the fund subject to the power) the appointment to grandchildren was void for remoteness. Held, that the children took absolutely in the first instance, and that the subsequent attempt to limit the absolute gift being void, the children took the fund absolutely. *Stephens* v. *Gadsden.* vol. 20, p. 463

(See *Webster* v. *Parr.* vol. 26, p. 236)

3. Appointment to *A. B.* (an object of a power), to be settled for her separate use, and to be divided, at her death, amongst her children. The gift to the children being void, they not being objects. Held, that *A. B.* took for life only, and not an absolute interest ineffectually attempted to be cut down. *Reid* v. *Reid.* vol. 25, p. 469

4. Two bequests were made to the same person in successive sentences, and in the latter, the words "for life" were added. Held, that the limitation applied to the second gift only, and that the legatee took the first absolutely. *Gower* v. *Towers.* vol. 26, p. 81

5. A testator directed his executors to raise a legacy "to or in trust for his son." It was to be invested in the names of trustees, and life annuities were given to the son and his wife out of the income, and interests were given to the children of the son and to their issue, with gifts over. Held, that there was an absolute gift to the son cut down to the limited extent of the subsequent gifts. *Salmon* v. *Salmon.* vol. 29, p. 27

6. A testatrix, by her will, gave her residue between *A.* and *B.* *B.* being dead, she, by a codicil, gave her residue between *A.* and *C.*, "for the use of their children, and, when they come of age, to have settled upon them." She added, "I mean *A.* is to share my fortune with *B.*" Held, that *A* 's interest was only cut down to the extent of the trust in favour of his children, and this trust failing by *A.*'s death without ever having had issue, that *A.*'s representatives were entitled to a moiety of the residue. *Norman* v. *Kynaston.* vol. 29, p. 96

7. A testator bequeathed leaseholds to trustees, upon trust to pay the rents to his daughter for her separate use [without limit], but in case she should die before the expiration of the lease, then upon trust to accumulate the rents for her children. She never had any children. Held, that she took the whole interest in the leaseholds. *Watkins* v. *Weston.* vol. 32, p. 238

LIMITATION (WORDS OF).

1. The words "executors and administrators" have in some cases been construed to mean next of kin, but the words "executors, administrators and *assigns*" do not admit of that interpretation. *Graffley* v. *Humpage.* vol. 1, p. 52

2. A devise of real and personal estate to a *feme covert*, for life, for her independent use and benefit, "with remainder to the heirs of her body, in tail," with remainders over; accompanied with a declaration, "that all the aforesaid limitations were intended by the testator to be in strict settlement." Held, that, subject to the husband's life estate, the wife took an estate tail in the real estate, and an absolute interest in the personalty. *Douglas* v. *Congreve.* vol. 1, p. 59

3. Devise to testator's widow, for life, with remainder to trustees and their executors, to pay costs, &c., and to divide the residue of the rents amongst all the testator's brothers and sisters "who should be living at the time of the decease of his (testator's) wife, and to their issue, male and female, after the respec-

tive deceases of his said brothers and sisters, for ever; to be equally divided between and among them." Held, that the words "issue male and female" were to be construed as words of limitation, and not of purchase; and that the children of a sister of the testator who died in the lifetime of the widow, took no interest under the devise.

A similar decision made with respect to personal estate. *Tate* v. *Clarke*. vol. 1, p. 100

4. The ultimate limitation of a fund in a marriage settlement, after the death of a husband and wife, was to the husband, if he survived his wife, but if the wife survived, then, after her death, to such person as the husband should appoint, and in default, "to his executors, administrators, or assigns." The wife survived, and the husband made no appointment. Held that his residuary legatees, and not his next of kin, were entitled. *Howell* v. *Gayler*. vol. 5, p. 157
5. The ultimate trust in a marriage settlement of a fund belonging to the wife, was to her executors or administrators. Held, first, that the surviving husband, who was her administrator and not her next of kin was entitled; and secondly, that if by those words her next of kin were intended, then that the next of kin at the death of the wife, and not of the husband (who was tenant for life), were entitled. *Allen* v. *Thorp*. vol. 7, p. 72
6. Under a limitation, by deed of a fund, to "the executors or administrators of the settlor, to and for his and their own use and benefit." Held, under the circumstances, that the fund belonged to the next of kin, and not the administrator. *Meryon* v. *Collett*. vol. 8, p. 386
7. The word "son" is quite as flexible as the word "heir," and can as easily be read "issue male" as the word "heir" can be turned into "son." *Jenkins* v. *Lord Clinton*. vol. 26, p. 108
8. A testator devised an estate to his daughter for life, and after her decease to her son or sons, daughter or daughters, to him, her or them or his, her or their heirs for ever; but should his daughter die without having such heir or heirs, then the estate to be sold within three months after her death, and the produce divided amongst other persons. The daughter died without having had any issue. Held, that the gift over was valid and took effect. *Polley* v. *Polley*. vol. 29, p. 134
9. The word "heirs," in a devise to first and other sons, construed "heirs of the body," in order to give effect to the general intention, that the sons should take successively and in priority of birth. *Hennessey* v. *Bray*. vol. 33, p. 96
10. Devise to *A. B.* for life, and afterwards to his "first and other sons successively according to the priority of their respective births and their respective heirs" [omitting "of their bodies"], to the extent that the elder should be preferred to the younger, and "for default of such son or sons," to the daughters as tenants in common in fee. Held, that the sons of *A. B.* took successively as tenants in tail general. *Hennessey* v. *Bray*. vol. 33, p. 96
11. Devise to *A.* for life, with remainder to *B.* in fee; but if *B.* should die, leaving issue, then to his children. *B.* survived *A.* and died, leaving children. Held, that the gift to his children did not take effect. *Slaney* v. *Slaney*. vol. 33, p. 631

LIQUIDATED DAMAGES.

[*See* PENALTY.]

LIS PENDENS.

[*See* STATUTE OF LIMITATIONS (LIS PENDENS).]

1. After bill filed, but before subpœna served, the Defendant assigned the subject-matter of the suit. Held, that the assignee was a necessary party, and that the Court would, if necessary, grant an injunction to restrain any further assignment. *Powell* v. *Wright*. vol. 7, p. 444
2. Interests of Defendants *inter se*, arising out of the rights of the Plaintiffs, protected by the doctrine of *lis pendens*. *Tyler* v. *Thomas*. vol. 25, p. 47
3. In a suit instituted by creditors for the administration of the testator's estate, the deficiency of the personal estate for payment of the debts was payable out of two real estates devised separately to the Defendants *A.* and *B.* In 1846 the debts were ordered to be paid out of *A.*'s estate alone, without prejudice to his right of contribution against *B.*'s estate. In 1852 the suit was registered as a *lis pendens*, and two months afterwards *B.* mortgaged his estate to *C.* who had no notice of *A.*'s rights. Held, that there was a *lis pendens* as regarded *A.*'s rights, and that *C.*'s mortgage must be postponed to *A.*'s claim. *Ibid.*
4. In a suit to have an appointment, under a discretionary power, declared invalid, a subsequent appointment *pendente lite* upheld. *Ward* v. *Tyrrell*. vol. 25, p. 563
5. A registered *lis pendens* does not create a charge or lien on the property, nor does it excuse a purchaser from completing his contract. It merely puts him upon an inquiry into the validity of the Plaintiff's claim. *Bull* v. *Hutchens*. vol. 32, p. 615

LOCO PARENTIS.

1. By merely making provisions for grandchildren, grandparents do not necessarily place themselves *in loco parentis*. *Lydon* v. *Ellison*. vol. 19, p. 565
2. *A. B.*, by two deeds, made provision for his natural children and their mothers. Held, that the fact, that the settlor could not place himself *in loco parentis* as to the latter, shewed that it was not his intention to do so as to the former. *Palmer* v. *Newell*. vol. 20, p. 32

LONDON.

Construction of a charitable gift to the hospitals of *London*. *Wallace* v. *The Attorney-General*. vol. 33, p. 384

LOST INSTRUMENT.

1. Bill by indorsee against the acceptor of a bill alleged to have been mislaid, lost, or accidentally destroyed, for payment or an indemnity, dismissed with costs, the loss, &c. not being sufficiently proved. *Cockell* v. *Bridgeman*. vol. 4, p. 499
2. A bill was filed for relief in respect of a lost bond, which was alleged to have been altered after its execution. Held, that the doctrine laid down in *Simpson* v. *Lord Howden* did not apply, for the bond being lost the objection would not, at law, appear on the face of it. *Williams* v. *Flight*. vol. 5, p. 41
3. *R.*, being indebted to the Plaintiffs, gave them a bill of exchange, drawn by *R.* and accepted by the Defendant, but made payable to *R.*'s order. The bill was not indorsed by *R.*, and, being sent back for that purpose, was destroyed by *R.* Held, that a suit by the Plaintiff against the Defendant to recover the amount of the bill could not be sustained. *Edge* v. *Bumford*. vol. 31, p. 247

LUNACY.

[*See* GUARDIAN AD LITEM, JURISDICTION.]

1. On a bill to set aside deeds and recoveries, on the ground of the lunacy of the party at the time he executed them: Held, that the finding of the jury on an inquisition, which overreached that period, afforded a presumption that he was then insane; but there being some evidence, that after the time when the lunacy was stated to have commenced the party was not of unsound mind, an issue was directed to inquire whether he was of unsound mind at the time of executing the deeds, &c. *Frank* v. *Mainwaring*. vol. 2, p. 115
2. A bill was filed on behalf of an infant, with the sanction of the Master, to set aside deeds, executed by a lunatic after he had been found lunatic by inquisition. An issue having been directed, the jury found in favour of the deeds. The bill was dismissed with costs of suit and of the issue. *Frank* v. *Mainwaring*. vol. 4, p. 37
3. The law will raise an implied contract, and give a valid demand or debt against the lunatic or his estate, for moneys expended for the necessary protection of his person and estate. Under a commission of lunacy, *A. B.* was, upon inquisition, found lunatic, and the verdict was confirmed upon the trial of a traverse. Before the costs had been ordered to be raised *A. B.* died. Held, that under the 3 & 4 *Will.* 4, c. 104, the real estate of the lunatic was liable for the costs of the proceedings. *Williams* v. *Wentworth*. vol. 5, p. 325
4. Where a guardian *ad litem* of a person of unsound mind, though not so found by inquisition, dies, a special application is necessary to obtain the appointment of a new guardian, and an appointment by an order of course is irregular. *Needham* v. *Smith*. vol. 6, p. 130
5. The Court under the circumstances of the case, refused to set aside deeds executed by one under restraint in a lunatic asylum, under medical certificates. *Selby* v. *Jackson*. vol. 6, p. 192
6. When a party, without authority, but *bonâ fide*, assumes the management of the property of one mentally incompetent, this Court will not, on his recovery, restore to him his property without making an equity allowance for the expenses and liabilities. *Ibid.*
7. Difficulty in holding a partner who ostensibly takes an active part in the conduct of the business free from responsibility, on the ground of insanity, in respect of the acts of the firm. *Sadler* v. *Lee*. vol. 6, p. 324
8. *A.* was found lunatic in *Ireland*, and *B.* was appointed his committee there. *A.* being a Defendant to a suit in *England*, an application was made that *B.* might be appointed guardian *ad litem*. Held, that the proper course was to get the *Irish* commission recorded in *England*, under the 1 *Will.* 4, c. 65, s. 41, and then for the lunatic and committee to answer together. *Lady Hartland* v. *Atcherley*. vol. 7, p. 53
9. A bill may be filed in the name of a person alleged to be of unsound mind, though not so found by inquisition, by any one professing to be his next friend; and such a person may be sued as a Defendant, and the Court then appoints a guardian to answer for him. In such cases, the Court imposes all the restraints of infancy, and the party is bound by the

acts of the guardian so appointed. The Court having proper evidence, that they are incapable of protecting their own interests, treats them as infants or as insane, though not so found by inquisition, and being satisfied that their next friend or guardian pays proper attention to their interests, and making all necessary inquiries to ascertain their rights, and what is beneficial to them; or, if necessary, directing that a commission may be applied for, ultimately deals with their rights and property as justice may require. *Nelson* v. *Duncombe*; *Duncombe* v. *Nelson*. vol. 9, p. 211

10. A contract may be implied, in favour of a person, who has supplied a person of unsound mind, though not so found by inquisition, with necessaries, or has provided him with proper protection and support. *Ibid.*

11. Jurisdiction of the Court to interfere for the protection of a lunatic not found so by inquisition. *Ibid.*

12. Though the finding of a person's insanity, by inquisition upon a commission of lunacy, is not binding on third parties, still it destroys the natural presumption in favour of sanity, and casts the burden of proving the person's sanity on the party alleging it. *Snook* v. *Watts*. vol. 11, p. 105

13. After a bill to foreclose, the mortgagor was found lunatic by inquisition, at a date overreaching the mortgage deed. At the hearing, an issue was directed as to his sanity at the date of the mortgage. *Ibid.*

14. As to the difficulties in ascertaining a man's sanity, and the proper tests to be employed. *Ibid.*

15. Order made by the Master of the Rolls, directing the dividends of a sum in Court, belonging to a person of unsound mind, though not so found by inquisition, to be paid to her father for her maintenance. *In re Berry*. vol. 13, p. 455

16. A fund producing upwards of 200*l.* a year, belonging to *A. B.*, a person of unsound mind, though not so found by inquisition, was paid into Court under the Trustee Relief Act. A petition to the *Master of the Rolls* for the application of the income towards his maintenance was refused. *Re Irby*. vol. 17, p. 334

17. A deed though overreached by the finding of an inquisition in lunacy, is not, therefore, necessarily *primâ facie* void. *Jacobs* v. *Richards*; *Jacobs* v. *Porter*. vol. 18, p. 300

18. A party claiming under a deed is not bound to prove the sanity of the person executing it; the burden of proof lies on the other side. *Ibid.*

19. *A. B.* executed a mortgage to the Plaintiff in 1848, and in 1852 he was found lunatic as from 1825. The Plaintiff, having instituted a suit to foreclose, proved the execution of the deed by the attesting witness. The Defendant did not cross-examine this witness, but entered into evidence to prove the insanity of the mortgagor in 1848. This Court, observing on the difficulties in putting the Defendant on terms to restore the money, Held, that the Defendant ought to have filed a cross bill, and a decree was made for foreclosure, but not to be drawn up for six months, to enable the Defendant to take such steps as he might be advised. On appeal, the Lords Justices gave liberty to the Plaintiff to proceed at law, and reserved further consideration, but in default, dismissed the claim. *Jacobs* v. *Richards*. vol. 18, p. 300

20. Jurisdiction of the Court to entertain a suit instituted in the name of a person of weak mind by a next friend. *Light* v. *Light*. vol. 25, p. 248

21. Decree made in such a suit for the protection of the Plaintiff's property, and liberty given to apply in lunacy as to its application. *Ibid.*

22. A sum of 390*l.*, being the whole property to which a lunatic (not so found by inquisition), aged fifty, was entitled, ordered by the Master of the Rolls to be paid to her mother, who had previously maintained her, on her undertaking to maintain her for the future. *Williams* v. *Allen*. vol. 33, p. 241

23. The Lords Justices made an order under "The Lunacy Regulation Act, 1862," which appointed two persons to receive from the Defendants (the trustees) and apply for his benefit the property of a prisoner acquitted on the ground of his lunacy. This Court, on bill filed, decreed the execution of the order. *Harvey* v. *Trenchard*. vol. 34, p. 240

24. Under "The Lunacy Regulation Act, 1862" (25 & 26 *Vict.* c. 86), the Lord Chancellor has power to appoint persons to recover and receive funds of a lunatic without inquisition and in a summary manner, in the alternative either of his income being under 50*l.*, or his property not exceeding 1,000*l.* in value. *Ibid.*

25. This Court cannot entertain an objection that an order was made by the Lords Justices in lunacy in the absence of proper parties. *Ibid.*

MACHINERY.

1. Looms in a mill were not fixed, but were merely steadied, by having their four iron legs let into four loom-foots dropped into the floor. Held, that they did not pass by a mortgage of the mill and the machinery belonging to the mill, nor by a contract for sale in similar terms. *Hutchinson* v. *Kay*. vol. 23, p. 413

2. Mortgage of iron works and rolling mill,

with the machinery, &c. specified in schedule, "and all engines, machinery, fixtures and things which might thereafter be fixed and fastened in or upon the same premises, whether in addition or substitution." Held, that the words "fastened in or upon the same premises" governed the sentence, and that subsequent additions, consisting of an engine for turning a lathe, a steam hammer and anvil, a boiler and furnace, passed to the mortgagees; but that cutters, bed plate, straightening plate, and the metal flooring of the mill did not. *The Metropolitan Counties, &c. Society* v. *Brown*. vol. 26, p. 464

3. Under an assignment of the machinery fastened in or upon a mill. Held, that an anvil, though not fastened or fixed to it, passed, as essential to a fixed steam hammer. *Ibid.*

MAINTENANCE.

[*See* LUNATIC, PRECATORY TRUSTS.]

1. An increased allowance for maintenance made out of the property of infants, for the purpose of supporting their parents who were in great indigence. *Allen* v. *Coster*. vol. 1, p. 202

2. Sums paid by an executor out of an infant's property for his *maintenance*, cannot be allowed by the Master under a direction to make all just allowances." *Cotham* v. *West*. vol. 1, p. 380

3. A party, whose interest in a fund had not vested, held, under the terms of a power in a will, entitled to maintenance, even after attaining twenty-one. *Ellis* v. *Maxwell*. vol. 3, p. 587

4. Special order for allowance of maintenance to an infant resident with her father out of the jurisdiction. *De Weever* v. *Rockport*. vol. 6, p. 391

5. A testator bequeathed a house, &c. to his wife, for the use of herself and his daughter, subject to the following trust, "that his wife and daughter should live together, and that his wife should take charge and see to the maintenance and support of his daughter, during her minority, with the instructions of *H.C.*" He also gave 100*l.* to his wife, in addition to the house, &c., for the further support of herself and his daughter. Held, that the widow took absolutely, subject to a trust for the maintenance and support of the daughter during minority, and which did not cease upon her marriage under age. *Conolly* v. *Farrell*. vol. 8, p. 347 (See *Pride* v. *Fooks*. vol. 2, p. 430)

6. After the death of their father, infants petitioned for an allowance for maintenance out of their fortunes. Held, that such maintenance was to be determined irrespective of the means of their mother to support them out of her own fortune. *Douglas* v. *Andrews*. vol. 12, p. 310

7. A testator standing in *loco parentis*, gave to trustees a legacy of 4,000*l.*, on trust to pay it to *A. B.*, on his attaining twenty-one. He authorized them to raise it by mortgage of his real estates; and, out of the moneys thereby bequeathed, to raise such sum, not exceeding the interest at 4 per cent. of the expectant portion, as to them should seem sufficient for maintenance. Held, that the legatee, during minority, was entitled to maintenance only, and not to the whole amount of interest on the legacy. *Rudge* v. *Winnall*. vol. 12, p. 357

8. By a settlement power was given to the wife to appoint a fund to her children, for any interests and either absolutely or conditionally; and it empowered the trustees, during the minorities of the children, to apply the income for their maintenance and education, notwithstanding the husband might be of sufficient ability to maintain and educate them. The wife appointed the fund equally among all her children, and directed the income, during their minorities, to be paid to her husband, to be applied by him for their maintenance and education. The children had other means of maintenance. The trustees of the settlement declining to pay the income of the trust fund to the children's father. Held, that this was a trust, and that the Court would apply a proper sum for the maintenance and education, and not necessarily the whole; and a reference to chambers was directed to inquire how much ought to be allowed, regard being had to the provision from other sources. *White* v. *Grane*. vol. 18, p. 571

9. Bequest for "maintenance" of a child held not to cease on his death, but to pass to his representative. *Bayne* v. *Crowther*. vol. 20, p. 400

10. Bequest of leaseholds, in trust to pay half of the rents to *A.* for life, and the other half to *B.* for life, and in case of the death of either, his share of the rents "to be paid and applied for the maintenance of his children," until the decease of the survivor of *A.* and *B.*, and then to sell and divide equally between the children of *A.* and *B.* After the death of *A.*, one of his children died. Held, that his representative was entitled to a share in the rents until the death of *B.* *Ibid.*

11. A trustee *bonâ fide* advanced a sum to apprentice an infant, in the life of the infant's father, who was in great pecuniary distress, while the infant's interest in the trust fund was contingent, and before a power of advancement had come into operation. Held, that in taking the accounts as against trustee the amount ought to be

allowed to him. *Worthington* v. *M'Craer.* vol. 23, p. 81

12. Devise to the children of *A.*, *B.*, and *C.* who should be living when the youngest attained twenty-one, with a direction, that "the present yearly rents" should be paid to the persons who brought up the children of *C.* Held, upon the context, that until the contingency happened, the rents were to be paid to such persons in trust not only for the children of *C.* but of *A.* and *B.* *Sanders* v. *Miller.* vol. 25, p. 154

13. Power of maintenance of "the person for the time being entitled" to the estate, held, to include persons "absolutely or presumptively entitled." *Sidney* v. *Wilmer.* vol. 25, p. 260

14. A husband being held liable at the suit of the children of his wife's first marriage to replace trust funds received by him, claimed a large sum expended in maintaining, &c. the children after the second marriage. The claim was disallowed. *Grove* v. *Price.* vol. 26, p. 103

15. Trustees applied a part of the capital of a fund belonging to infants, who had been left destitute by the father, for their benefit. They were allowed the amount. *Prince* v. *Hine.* vol. 26, p. 634

16. Bequest in trust to pay the interest to the testator's wife for life, for the separate use of his wife and their children, and applied for the maintenance and support of herself, and the maintenance, education, clothing and support of such children. The widow mortgaged her interest and became insolvent. Held, that the trust was only for the benefit of those children requiring support, and a reference was directed to ascertain what part of the income was necessary for that purpose. *Carr* v. *Living.* vol. 28, p. 644

17. A testator authorized his executor to advance any part, "not exceeding one-half of the presumptive share" of his children, towards their maintenance and advancement. The estate being very small, the executor advanced more than the whole. The estate being insufficient to repay the amount to the executor, the Court, in a suit by a child for administration, gave priority to the costs of suit, but gave the surplus to the executor in part payment of his advances. *Robinson* v. *Killey.* vol. 30, p. 520

18. The testator gave his residue, on trust to apply the income for the maintenance, education and support of his children until the youngest attained twenty-one. The children having been maintained, &c., the Court declined directing an account of the application of the income during the minority of the youngest child, without a special case being made out. *Hora* v. *Hora.* vol. 33, p. 88

19. Gift to a widow, she maintaining and educating the testator's son and two daughters thereout, until the son attained twenty-one. Held, that the son, who had married and ceased to reside with his mother, but was still a minor, was not entitled to maintenance. *Staniland* v. *Staniland.* vol. 34, p. 536

20. Bequest to widow of two-thirds of the residue, "to be at her sole and entire disposal, for the maintenance of herself and such child or children as I may leave by her." Held, that the widow had an uncontrolled power over the income so long as the children were maintained, and that the right of the children to maintenance did not cease at twenty-one. *Scott* v. *Key.* vol. 35, p. 291
(*Carr* v. *Ling.* vol. 33, p. 474)

MARRIAGE.

[*See* FOREIGN LAW, MARRIED WOMAN, MISREPRESENTATION.]

1. After a lapse of twenty-eight years a consent to marriage, so as to avoid a forfeiture, was, under the circumstances, presumed. *Re Adrian Birch.* vol. 17, p. 358

2. As to the obligation of a father to make good promises made on the marriage of his daughter, to his intended son-in-law, to leave her a share of his property, and on the faith of which the marriage took place. *Loxley* v. *Heath.* vol. 27, p. 523

3. A father, prior to the marriage of his daughter, in a correspondence with his intended son-in-law, stated that all his property would be equally divided amongst his children at his decease. A settlement was executed prior to the marriage, which omitted all mention of this. Held, that there was an obligation binding on the father; but the first letter having alluded to a prior conversation applying the representation to children who should survive the father, the Court held, that this condition, though not mentioned, affected the whole of the subsequent correspondence, and that the obligation was conditional on her surviving. She predeceased her father, leaving a child. Held, that the father was under no obligation to leave any part of his property to the daughter or her issue. *Ibid.*

4. Upon the treaty for a marriage, the father of the lady wrote to the husband, "I still adhere to my last proposition, viz. to allow *Elizabeth* 100*l.* a year, . . . and at my decease she shall be entitled to her share of whatever property I may die possessed of." Held, 1st. That this was a contract binding on the father; 2nd. That it was not so vague as to prevent its being enforced; 3rd. That it did

not include freehold property; 4th. That the daughter was entitled to an equal share with the other children of the personal estate which the testator died possessed of, after deducting the widow's one-third share and the debts and expenses; 5th. That parol evidence was inadmissible to shew what was intended by the words "her share;". 6th. That the suit ought not to be by the daughter alone, but that her husband ought to be a Plaintiff. *Laver* v. *Fielder*.
vol. 32, p. 1

MARRIAGE ACT.

Where the husband alone incurs a forfeiture under the Marriage Act (4 *Geo.* 4, c. 76, s. 23), the Court has no authority to order any settlement of the wife's property on the issue of the wife by any subsequent marriage. *Attorney-General* v. *Mullay*. vol. 7, p. 351

MARRIAGE SETTLEMENT.

[*See* ABSOLUTE INTEREST, CONSTRUCTION, COVENANT TO SETTLE, DOMICILE, EXECUTORY TRUSTS, IMPLICATION (GIFT BY), PORTION, REFERENCE (GIFT BY), STATUTE OF FRAUDS, VESTING, VOLUNTARY SETTLEMENT.]

1. Whether, after the execution of a marriage settlement, which is not executory, the husband and wife have power before the solemnization of the marriage to revoke it, *quære*. *Page* v. *Horne*.
vol. 9, p. 570

2. On the 14th of *March*, in contemplation of a marriage, a mortgage in fee was conveyed to trustees, on certain trusts for the intended wife, husband, and the issue of the intended marriage. On the 27th of *March*, the husband and wife revoked it. Upon a bill by the husband, claiming the mortgage *jure mariti*, the Court referred it to the Master to inquire under what circumstances the revocation had been executed. *Ibid.*

3. A *feme sole*, in contemplation of a marriage with *T.*, vested personal property in trustees, upon trust for the sole benefit of herself, her executors, &c., until her marriage (if any), with subsequent trusts for her issue. She never married *T.*, but before her marriage with *M.* the trustees handed over to her a part of the fund. Held, that the settlement was irrevocable; that she had no power of absolute disposition until marriage; that the trusts were to arise on any marriage; and that the trustees had committed a breach of trust for which they were answerable. *M'Donnell* v. *Hestlrige*. vol. 16, p. 346

4. On their marriage, a lady and her husband covenanted to settle her real estate, on trusts, under which the husband was to have a life estate therein, and the wife obtained benefits in her personalty which she would not have been otherwise entitled to, and had a power to appoint a fund by will. She appointed the fund to strangers. On her death the settlement turned out to be inoperative as to her real estate, she having been an infant when she executed it, and the husband therefore lost his life estate in it. Held, that the appointees were not volunteers but purchasers under the wife, and that the husband was not entitled to compensation out of the wife's personal estate included in the settlement for the loss of his life estate in the wife's realty. *Campbell* v. *Ingilby*. vol. 21, p. 567

5. In the case of marriage contracts, it is impossible to set them aside after the marriage, on the ground of a failure of a pecuniary consideration on one side. *Ibid.*

6. Settlement by husband of all his personal estate to which he was then or might thereafter become entitled, in trust for himself for life, with remainder absolutely to his wife. Held, not to comprise his interest in a fund bequeathed to him for life, with remainder to his children. *St. Aubyn* v. *Humphreys*.
vol. 22, p. 175

7. By a post-nuptial settlement, a husband and wife covenanted with trustees to settle all the property which the wife might become entitled to during the coverture on themselves for life, with remainder to their children. During the coverture, part of such property was allowed by the husband to be paid over to the trustees; the other part was not reduced into possession at the husband's death. Held, that originally, the settlement was binding on neither party; and secondly, that the part paid over had been effectually made subject to the trusts by the husband. *Anderson* v. *Abbott*. vol. 23, p. 457

8. Invalidity of a parol agreement of the husband prior to marriage to settle his wife's property. *Spicer* v. *Spicer*.
vol. 24, p. 365

9. Where, prior to a marriage, the parties transfer a fund to trustees upon trusts agreed on by parol only, and the instrument declaring the same trusts is executed after the marriage, it is perfectly valid as an instrument for valuable consideration. *Cooper* v. *Wormald*.
vol. 27, p. 266

10. A parol ante-nuptial contract is not a good consideration to support a post-nuptial settlement as against creditors. *Goldicutt* v. *Townsend*. vol. 28, p. 445

11. A post-nuptial settlement of money recited an ante-nuptial contract. By the settlement, those children who sur-

vived their parents alone took, but by the contract, as recited, all the children took vested interests at their birth. The recital being the only proof of the contract. Held, that the Court must act on the settlement. *Mignan* v. *Parry*. vol. 31, p. 211

12. On *Tuesday*, an intended husband, who was an infant, wrote to the trustee of the intended wife, "that he especially wished his wife's property entirely settled on herself," and that the wedding was to take place on *Saturday*. They married unknown to the trustee on *Wednesday*, without any settlement. Held, that this letter contained no settlement or agreement for a settlement binding on the husband or wife. *Beaumont* v. *Carter*; *Carter* v. *Beaumont*. vol. 32, p. 586

13. The five children of a testator were absolutely entitled to his residue. One of them, on her marriage, settled her fifth of such residue, and all other her share by survivorship or otherwise, and all her right, contingent, reversionary, or otherwise, possibility, &c. therein. She afterwards became entitled to a further share by the death of a brother intestate. Held, that it was not included in the settlement. *Edwards* v. *Broughton*. vol. 32, p. 667

MARRIED WOMAN.

[*See* HUSBAND AND WIFE, MARRIED WOMAN'S CONVEYANCE, MARRIED WOMAN'S PROPERTY.]

1. *C. E.*, in the lifetime of her husband, contracted a second marriage with the testator, and after his death with *J. C.* The testator believing *C. E.* to be his wife, bequeathed to her all his property, and appointed her his executrix; she proved his will, and *J. C.*, as her husband, possessed part of the estate of the testator; the next of kin having filed a bill against *C. E.* and her real husband, impugning the validity of the will, and seeking an account of the testator's estate. Held, that the husband of *C. E.*, though he had not interfered, was a necessary party, but that *J. C.*, her supposed husband, was not. *M'Kenna* v. *Everitt*. vol. 1, p. 134

2. A husband went abroad, leaving his wife and child unprovided for, whereupon the father of the husband and the father of the wife entered into an agreement to allow the wife 30*l.* each, "so long as she should continue separate and apart from" her husband. Held, that the allowance terminated by the death of the husband. *Miller* v. *Woodward*. vol. 2, p. 271

3. A husband became liable for bills of costs due from his wife, *dum sola*, and from her former husband, to a solicitor. Held, that though the relation of solicitor and client did not exist between the solicitor and the second husband, yet that the latter was entitled to a taxation of the bills of costs. *Waring* v. *Williams*. vol. 2, p. 1

4. Where husband and wife are Defendants, and the suit does not relate to separate estate, service of a copy of the bill on the husband alone, is good service. *Kent* v. *Jacobs*. vol. 5, p. 48

5. Where a suit relates to a wife's separate estate, she, as well as her husband, must be served with a copy bill. *Salmon* v. *Green*. vol. 8, p. 457

6. A wife cannot, in this Court, be heard upon a motion on behalf of her husband. *Oldfield* v. *Cobbett*. vol. 14, p. 28

7. In every case where a married woman seeks to tax a solicitor's bill, for business in respect of her separate estate, she must apply by her next friend. *In re Waugh*. vol. 15, p. 508

8. The next friend will be liable for the costs of the order and taxation, but not for the amount of the bill. *Ibid.*

9. Where a married woman employs a solicitor and makes her separate estate liable, she is, though not personally liable, a "party chargeable" within the meaning of the 37th section of the 6 & 7 *Vict.* c. 73. *Waugh* v. *Waddle*. vol. 16, p. 521

10. A wife can only be made a party to a suit instituted by her husband in respect of her separate estate; and the husband, by making her a party, in fact admits it to be her separate estate. *Earl* v. *Ferris*. vol. 19, p. 67

11. Whether a *feme covert* can, in respect of her separate estate, consent to a breach of trust, *quære*. *Davies* v. *Hodgson*. vol. 25, p. 177

12. A wife obtained an order for protection under the 20 & 21 *Vict.* c. 85, s. 21. Held, that she was entitled to payment of a fund in Court representing a legacy bequeathed to her. *In re Kingsley's Trust*. vol. 26, p. 84

13. A wife was deserted by her husband. Afterwards, her father bequeathed a fund for her separate use, without power of anticipation, and she subsequently obtained a protecting order under the 20 & 21 *Vict.* c. 85, s. 21. Held, that she was entitled to payment. *Cooke* v. *Fuller*. vol. 26, p. 99

14. A contract entered into and paid for by a wife, without the knowledge, but for the benefit of her husband, is valid and binding when ratified by the husband. *Millard* v. *Harvey*. vol. 34, p. 237

15. A bequest of an annuity to a married woman, "in the event of the death of or her separation from her present husband," was followed by a right to reside in the testator's house "in the event of the death of her husband, or her separa-

tion from or living apart from him." She was separated from him, not by any legal separation, but by reason of his infirmity. Held, that she was entitled to the annuity. *Bedborough* v. *Bedborough.* (No. 2.) vol. 34, p. 286

MARRIED WOMAN'S CONVEYANCE.

1. A husband seised in right of his wife, concurred with the other tenants in common in a partition of estate and mines, but no fine was levied. He died in 1828; after which his widow acquiesced in the arrangement, and took the benefit of it. She and her lessee afterwards proceeded to get coal under the land awarded to other parties, and defended that proceeding, on the ground that the husband's acts were invalid, and that the parties were still tenants in common of the whole. The Court restrained her by injunction. *Maden* v. *Veevers.* vol. 5, p. 503
2. Though no assignment can be made of the reversionary interest of a married woman, so as to bind her, in the event of the death of her husband in her lifetime and before it falls into possession, yet a perfect conveyance may be made by her and her husband, under the Fines and Recoveries Act, of a reversionary interest in the produce of real estate directed to be sold. *Tuer* v. *Turner.* vol. 20, p. 560
3. Stock in Court, settled absolutely to the separate use of a married woman, ordered, upon her petition, to be transferred into the joint names of herself and her husband, her separate examination and consent being dispensed with. *Re Crump.* vol. 34, p. 570

MARRIED WOMAN'S PROPERTY.

[*See* MORTGAGE (OF WIFE'S PROPERTY), POWER (EXECUTION OF), REDUCTION INTO POSSESSION, SEPARATE USE, WIFE'S REVERSIONARY INTEREST.]

1. The income of wife's property, being *choses in action*, and not possessed or reduced into possession in the lifetime of her husband, belongs to the wife by survivorship, and not to the representatives of the husband or his assignee. *Wilkinson* v. *Charlesworth.* vol. 10, p. 324
2. Bequest to *A.*, his wife and children. *A.* and his wife being together entitled to one-fourth, *A.* insisted that he was entitled to one-half of such one-fourth in his own right, and that his wife was entitled to a settlement in respect of a moiety only. His wife, however, claimed a settlement in respect of the whole. Held, that the fund must be retained, with a direction to pay the dividends to the husband during the joint lives, with liberty for the survivor to apply. Held also, that if such a legacy were not brought under the consideration of the Court, payment to the husband would be a good payment; but in case of no payment the wife would be entitled by survivorship. *Atcheson* v. *Atcheson.* vol. 11, p. 485
3. An estate was devised to a *feme covert* for her separate use. She entered into a contract for sale and died, having devised the estate to her husband, who sued for a specific performance. The purchaser objected, that the *feme covert* had neither power to enter into a contract nor to devise the estate. The Court declined to compel a specific performance in the absence of the heir. *Harris* v. *Mott.* vol. 14, p. 169
4. Trust funds were limited to a married woman absolutely if she survived her husband, but, if she predeceased him, she was to have a general power of appointment by will. The wife survived her husband. Held, that the power had not arisen, and that therefore her will, made during the coverture, was inoperative. *Trimmell* v. *Fell.* vol. 16, p. 537 (See *Laprimaudaye* v. *Teissier.* vol. 12, p. 206)
5. The savings of a wife's separate estate were invested in the joint names of husband and wife. The fund was afterwards applied in the purchase of a real estate. After the death of the husband, the Court, on the evidence, Held, that the estate belonged to the wife. *Darkin* v. *Darkin.* vol. 17, p. 578
6. Two promissory notes, and a gas share, were left to a *feme sole* for her separate use. She married, but they were not settled, and they were subsequently transferred into the name of the husband. There being written recognitions of the husband that they were the wife's, Held, after his death, that they belonged, as separate estate, to her. *Ibid.*
7. Husband and wife had, for many years, lived and were still living separate. The husband remitted money for her maintenance and support. She saved a considerable portion. Held, that the husband could not recover back these savings, and a demurrer to a bill by the husband against his wife and her bankers for that object was allowed. *Brooke* v. *Brooke.* vol. 25, p. 342
8. Upon a marriage, the lady's property was settled on herself until the marriage, and afterwards on certain trusts, and giving her, in the event of her predeceasing her husband, power to appoint the property by will. Shortly after the marriage, the lady made a will appointing and bequeathing the property partly to her husband's family. She survived her

husband, and the marriage turned out to be void. Held, that notwithstanding the power had never arisen, the will was a valid disposition of the settled property. *Jones* v. *Southall.* vol. 30, p. 187

MARSHALLING ASSETS.

1. *A.*, being entitled to a moiety of an estate, covenanted to settle it on himself for life, with remainder to his wife and children. He afterwards acquired the other moiety, and mortgaged the entirety to *B.*, who, having no notice, obtained priority over the wife and children of *A.* By the will of *B.* the mortgage was given to *C.* for life, with remainder to *A.* absolutely. *A.* died, and *C.*, by virtue of the mortgage, received the rents of the entirety to the disappointment of the wife and children of *A.* *C.* afterwards died. Held, that the widow and children of *A.* had no equity as against the general creditors of *A.* to have a lien on the second moiety of the estate, to recoup the loss sustained by them by *C.*'s receiving the rents of the moiety of the estate bound by the settlement, from the death of *A.* to the death of *C.*, but that they must come in as specialty creditors under the covenant. *Aldridge* v. *Westbrook.* vol. 5, p. 188
2. A testator bequeathed legacies to *A.*, *B.* and *C.*, payable out of his personal estate, and he devised his real estate, subject to the payment of his debts, to *D.* and *E.* The personal estate being exhausted in payment of debts, the legatees were held entitled, on the principle of marshalling, to have recourse for payment to the real estate, to the prejudice of the devisees. *Surtees* v. *Parkin.* vol. 19, p. 406
3. Two properties, *X.* and *Y.*, were mortgaged to *A.*, and afterwards *X.* alone is mortgaged to *B.* Held, that *B.* is entitled to have the securities marshalled so as to throw *A.*'s mortgage in the first instance on estate *Y.* *Gibson* v. *Seagrim.* vol. 20, p. 614
4. A trustee advanced to *A. B.* (one of his *cestuis que trusts*) a part of the trust funds, to enable him to purchase a real estate. *A. B.* died without having repaid the money, having devised the estate, and his personal estate was insufficient to pay his debts and legacies. Held, first, that there was a lien on the estate for the trust funds; and, secondly, that the pecuniary legatees had, as against the devisees, a right of marshalling, so as to have the lien satisfied, primarily, out of the purchased estate. *Birds* v. *Askey.* (No. 2.) vol. 24, p. 618
5. A testator bequeathed an annuity to his wife for life, and his residuary estate to his children. The executors set apart a fund to answer the annuity. Some of the children settled their shares in this fund, by specific description, and they afterwards incumbered the shares in the other residuary estate. By the reduction of the interest of the fund set apart, the capital of it was resorted to for payment of the annuity. Held, that the persons claiming under the settlement were not entitled, as against the incumbrancers of the residue, to have the annuity fund made good out of the residuary estate. *Wedderburn* v. *Wedderburn.* vol. 25, p. 113
6. Pecuniary legatees are entitled, as against the devisees (under the doctrine of marshalling assets), to stand in the place of an unpaid vendor whose lien has exhausted the personal assets. *Lord Lilford* v. *Powys Keck.* (No. 3.) vol. 35, p. 77

MASTER OF THE ROLLS.

[*See* JURISDICTION.]

MERGER.

[*See* MERGER OF CHARGE.]

1. Valid lease of charity property which had merged in the fee by an invalid absolute conveyance to the lessee, sustained on setting aside the latter on an information by the Attorney-General. *Attorney-General* v. *Kerr.* vol. 2, p. 420
2. The owner in fee bought up an existing building lease of the property, and had it assigned to a trustee, in trust for him, "his executors, administrators, and assigns." Held, that the presumption was, that the lease had not, in Equity, merged in the inheritance, but that it passed as part of his personal estate. Held also, that the burden of proof was on those who asserted the contrary. *Gunter* v. *Gunter.* vol. 23, p. 571
3. *A. B.*, being owner of a leasehold, purchased the reversion in fee and had it conveyed to a trustee expressly that the term might not merge. He afterwards bequeathed to his wife "the whole of his personal property, estate and effects of every and whatsoever kind they might be." Held, first, that the real estate did not pass; and, secondly, that the term did not attend the inheritance, but passed to the widow. *Belaney* v. *Belaney.* vol. 35, p. 469

MERGER OF CHARGE.

[*See* LIFE TENANT AND REMAINDERMAN.]

1. A person having a partial interest in an estate bought up charges thereon, and had them transferred to trustees for him; he afterwards became absolutely entitled to the estate. Held, under the circum-

atances, that the charges had merged in the inheritance. *Lord Selsey* v. *Lord Lake.* vol. 1, p. 146

2. Where the same person becomes absolutely entitled to an estate and a sum of money charged upon it, the charge will be deemed extinguished, unless it appears that the owner intended otherwise. *Hood* v. *Phillips.* vol. 3, p. 513
3. For the purpose of shewing the intention, evidence direct and presumptive may be resorted to. A transfer to a trustee must be considered as one of the grounds rebutting the presumption of merger; but does not amount to decisive evidence against the presumption. *Ibid.*
4. *A. B*, the owner in fee of an estate, paid off a mortgage in fee existing on it, which in 1807 was transferred to a trustee, in trust for *A. B.*, her "heirs, executors, administrators, and assigns respectively;" and the trustee covenanted to convey to *A. B.*, her heirs or assigns, or unto such other person or persons, and in such manner and form as *A. B.*, her heirs, executors, administrators, or assigns should direct. *A. B.* devised the estate to a trustee to pay certain specified legacies, and subject thereto, she devised it to *C. D.* in fee, "and upon or for no other use, trust, intent, or purpose whatsoever." *A. B.* died in 1832. Held that the mortgage had merged. *Ibid.*
5. An estate subject to two charges, was devised to the party entitled to the first charge; and by the settlement made on her marriage, to which the second incumbrancer was no party, it was agreed that the charge should not be raised, and the estate was thereby settled. Held, that the first charge could not be set up against the second incumbrancer. *Farrow* v. *Rees.* vol. 4, p. 18
6. Merger of a charge in the inheritance is not to be assumed, if it would be contrary to the interest of the owner of the estate and charge. *Davis* v. *Barrett.* vol. 14, p. 542
7. An estate vested in *A.* for life, with remainder to his eldest son *B.* in tail, was subject to considerable family mortgages. *B.*, being possessed of other large property, granted an annuity of 2,500*l.* a year to *A.*, to cease upon his death, or upon *B.*'s "paying off, satisfying, and discharging" the several mortgages. Held, on the whole, that the intention was to merge the mortgages. *Hoghton* v. *Hoghton.* vol. 15, p. 278
8. A life estate and a life annuity charged on the same estate, and devised to the same person, held not to have merged. A testator devised to the Defendant, a married woman, a reversionary life interest in an estate, and she bequeathed to the Defendant, for life and for her separate use, an annuity charged on the same estate, and to commence immediately. She also bequeathed other annuities similarly charged. At the death of the testatrix, the prior limitation having failed, the Defendant became tenant for life in possession. The Defendant afterwards became discovert, and the property having become insufficient to pay all the annuities, Held, that a merger of the Defendant's annuity in her life estate, by operation of law, would not be presumed. *Byam* v. *Sutton.* vol. 19, p. 556
9. *A.*, the owner of a freehold estate, subject to a mortgage in fee to secure 1,300*l.*, devised and bequeathed his real and personal estate to *B.* the mortgagee. *B.*, in his residuary account, stated that he had retained 467*l.*, out of the personal estate, towards payment of his mortgage debt. Afterwards *B.* devised the property to three relatives of *A.*, "provided they undertake to receive the same with all the liabilities attaching thereunto." Held, first, under the circumstances, that the mortgage had not merged in the fee; and secondly, that the three took the estate subject to the payment of the balance of the mortgage debt. *Hatch* v. *Skelton.* vol. 20, p. 463
10. The owner of an estate voluntarily charged it with his own simple contract debt, and, by the same deed, settled the estate, subject thereto, on himself for life, with remainder to his daughter. He afterwards paid off the debt, but declared that the charge should continue for the benefit of his personal estate. After his death, held, that the charge still subsisted and must be raised and paid. *Jameson* v. *Stein.* vol. 21, p. 5
11. Charge paid off by a person having only a partial interest in the estate—Held, not to have merged. *Pitt* v. *Pitt.* vol. 22, p. 294
12. In 1824 *A.* purchased an estate, and he mortgaged it to raise part of the purchase-money. In *February*, 1840, it was paid off and transferred to *B.*, who in *April*, 1840, executed a declaration of trust in favour of *A.* *A.* died in 1848. Held, that the charge had merged. *Ibid.*
13. When the owner of an estate in fee simple becomes entitled to a charge on that estate, *primâ facie* the charge, in equity at least, merges in the inheritance, unless the owner of the estate does some act to keep it alive, or unless, from the circumstances of the case, it would be for his interest that it should continue to be a subsisting charge. *Swinfen* v. *Swinfen.* (No. 3.) vol. 29, p. 199
14. Devise by the owner in fee without mentioning a charge on it to which he was absolutely entitled. Held to be some indication of his intention to merge it. *Ibid.*

15. The testator was owner in fee of an estate on which there was a charge of 6,000*l.* to which he was absolutely entitled, and a subsequent charge of a jointure in favour of *B.* The testator devised the estate in fee to *B.* Held, that she took discharged of the mortgage. *Swinfen* v. *Swinfen.* (No. 3.) vol. 29, p. 199

16. Where a charge on an estate becomes vested absolutely in the owner of the inheritance of the estate, the three tests usually applied for ascertaining whether the charge has merged are:—First, whether there has been an actual expression of intention to that effect; secondly, whether the acts done by the owner of the estate are only consistent with the charge being kept on foot; and thirdly, whether it is for the interest of the owner that the charge should not merge in the inheritance. *Tyrwhitt* v. *Tyrwhitt.* vol. 32, p. 244

17. As to the effect of an expression of intention, on the part of the owner of the inheritance of an estate, as to the merger of a charge thereon, made previous to his becoming absolute owner of the charge. *Ibid.*

18. A fund, which was held in trust for *A.* for life, with remainder to *B.* absolutely, was lent by the trustees (*B.* and *C.*) to *B.*, on mortgage of his fee simple estates. By the mortgage deed, the trustees declared that they would hold the fund, after the decease of *A.*, for "*B.*, his executors, administrators and assigns, for his and their absolute benefit." *B.* survived *A.* and died. Held, that this was not a sufficient indication of a contrary intention to prevent the merger of the charge in the inheritance. *Ibid.*

19. *A.* and *B.* mortgaged their estate to *C.* Afterwards *B.* conveyed all his interest in the estate to *A.*, in consideration of a second charge on the estate. *A.* afterwards sold and conveyed the equity of redemption to *C.* in consideration of the mortgage debt. Held, that *C.*'s first mortgage was not thereby extinguished as against *B.* so as to give *B.* priority over *C.* *Haydon* v. *Kirkpatrick.* vol. 34, p. 645

MESSENGER.

[*See* OFFICER OF COURT.]

METROPOLITAN BUILDING ACT.

A tenant in possession, having an equitable interest only under an agreement for a lease for a term, is, in equity, an "adjoining owner" under the Metropolitan Building Act (18 & 19 *Vict.* c. 122), and three months' notice must be given to him before any alterations affecting his premises can be commenced by his neighbour, under the powers of that act. *Cowen* v. *Phillips.* vol. 33, p. 18

MINES AND MINERALS.

[*See* LEASE, LIFE TENANT AND REMAINDERMAN.]

1. Order made, on motion, for an inspection of coal-mines. *The Attorney-General* v. *Chambers.* vol. 12, p. 159

2. Observations as to the doubtful and speculative character of mining operations. *Jennings* v. *Broughton.* vol. 17, p. 234

3. Mines being of a property of a speculative character, it is incumbent on parties setting up claims in respect of them to act speedily. *Clements* v. *Hall.* vol. 24, p. 333

4. The owner of a mine sought relief against the owner of an adjoining mine for an alleged trespass in working into the Plaintiff's mine. Held, that the Plaintiff, upon making out a *primâ facie* case, was entitled to an interlocutory order for the inspection of the Defendant's mine; that the denial by the Defendant of the trespass was not a sufficient ground for refusing the order, and that it did not depend upon the balance of testimony. *Bennitt* v. *Whitehouse.* vol. 28, p. 119

5. A power of sale and exchange does not authorize trustees to sell the lands with a reservation of the minerals. *Buckley* v. *Howell.* vol. 29, p. 546

6. By mining operations, the Defendant had sunk not only the level of a stream supplying the Plaintiff's mill, but also that of the adjoining land. The Plaintiff filed a bill for an injunction; but it did not appear that there had been any diminution of water to the mill. Held, that the bill ought not to be dismissed: and on the Defendant's undertaking not to work the minerals so as to obstruct, &c. the water and the supply thereof along the watercourse, it was retained, with liberty to apply. The Court however intimated, that in default of the undertaking being given, an injunction would be granted. *Elwell* v. *Crowther.* vol. 31, p. 163

7. A testator demised all the seams of coal under his estate, but only two seams were worked or known of in his life. After his death a lower seam was discovered, which could only be worked by a new shaft. A new lease being granted after the testator's death: Held, that the tenant for life under his will was entitled to the annual profits arising from the new seam. *Spencer* v. *Scurr.* vol. 31, p. 334

8. It is a question of degree, to be esta-

blished by evidence, whether the working of a dormant or abandoned mine by a tenant for life is waste or not. *Bagot* v. *Bagot. Legge* v. *Legge.* vol. 32, p. 509

9. *Semble*, that a mine, the working of which had been discontinued for twenty or thirty years, in consequence of its not having been remunerative, might, after that time, be worked by a succeeding tenant for life; but a mine, where the working of which has been abandoned by the owner of the inheritance for the advantage of the property, cannot be worked by a succeeding tenant for life. *Bagot* v. *Bagot.* vol. 32, p. 509

MINUTES.

[*See* DECREE.]

1. Rule of practice as to varying the minutes of decrees. The registrar must first complete the minutes, and any party dissatisfied may then give notice of motion specifying the subject of complaint. *Prince* v. *Howard.* vol. 14, p. 208
2. When, at the hearing, liberty is given to mention the case again on the minutes, it must be done at least within a fortnight, otherwise the parties must give notice of motion specifying the alterations. *Hood* v. *Cooper.* vol. 26, p. 373

MISCALCULATION.

[*See* LEGACY.]

MISDESCRIPTION.

[*See* DESCRIPTION OF GIFT, DESCRIPTION OF LEGATEE, SECURITY FOR COSTS, TITLE OF BILL.]

1. Bequest of 800*l.* to the four eldest children of the testatrix's *cousin A. B.*, and 200*l.* to the three remaining children of her uncle *A. B.* The testatrix had a cousin and an uncle of that name. The cousin had seven children, and the uncle one; but he had three remaining grandchildren, one other having died. Held, that the three younger children of the *cousin* were entitled to the 200*l.* *Bristow* v. *Bristow.* vol. 5, p. 289
2. Plea of misnomer overruled. *Cust* v. *Southee.* vol. 12, p. 435
3. A testator charged all the "moneys standing in his name in the public funds" with the payment of an annuity. He had no money standing in his own name, but he was entitled to interests in funds standing in the names of trustees. Held, that such interests were charged with the annuity. *Quennell* v. *Turner.* vol. 13, p. 240
4. A testator gave real estate and personal estate in trust to sell and invest in "stock, funds, and securities," and hold the residue thereof upon the trusts declared by any codicil. By a codicil, he gave "the trust moneys, stocks, funds and securities" by the will bequeathed, to charitable purposes. Held, that the residuary real estate passed. *Whicker* v. *Hume.* vol. 14, p. 509
5. A bequest made in 1852 "to the *Carey Street* Infirmary, *Lincoln's Inn Fields, London*," held to belong to the "Public Dispensary," founded in *Carey Street* in 1782, removed to *Bishop's Court, Chancery Lane*, in 1806, and afterwards to *Carey Street* in 1850, and not to the *King's College Hospital*, founded in *Carey Street* in 1839, the testator having retired from business and left the neighbourhood in 1824. *King's College Hospital* v. *Whieldon.* vol. 18, p. 30
6. A testatrix gave her real estate in trust for her grandchildren (by name) and their issue, as *M. F.* should appoint, and in default of such appointment, upon trust for "my aforesaid nephews and nieces and their respective lawful issue, and also the issue (if any) of *M. F.* and their several and respective heirs and assigns for ever" as tenants in common. No nephews or nieces were mentioned in the will. *M. F.* died without appointing. Held, that there was no gift by implication to the grandchildren and their issue. Secondly, that the words "my aforesaid nephews and nieces could not be read "my aforesaid grandsons and granddaughters." Thirdly, that the gift to the nephews and nieces were not void for uncertainty; and lastly, that they took in tail. *Campbell* v. *Bouskell.* vol. 27, p. 325
7. Property was settled on *John Garner* of *Sambourne*, and *Elizabeth* his wife and her children. There was a person named *John Garner* of *Sambourne*, whose wife was *Hannah*, but they were not related to the settlor. There was also a *William Garner* of *Beoley*, whose wife was *Elizabeth*, and she was a niece of and intimate with the settlor. Held, that the latter were intended. *Garner* v. *Garner.* vol. 29, p. 114
8. Bequest to "*Francis*, the youngest son of *F. G.*" He had no son *Francis*, but he had an eldest named *Arthur Francis* and a youngest named *Arthur Charles*, who was the testator's godson. Held, that the youngest was entitled to the legacy. *Re Gregory's Settlement and Will.* vol. 34, p. 600

MISJOINDER.

1. A husband and wife were joined as co-Plaintiffs in a suit relating to the separate property of the wife, and the Defendant objected, by his answer, to the

misjoinder of the Plaintiffs. The cause coming on to be heard, the Court, after hearing the case, refused to dismiss the bill; but, upon the husband giving security for all the costs, permitted the bill to be amended, by adding a next friend, and making the husband a Defendant. *England* v. *Downs.* vol. 1, p. 96

2. The bill sought a general account of the estate of a testator who died in 1807, one of the co-Plaintiffs being held bound by a settlement of accounts in 1822. Held, that in this suit all the other co-Plaintiffs were equally bound by that settlement, and that in this suit the accounts could only be directed on the footing of such settlement. *Lambert* v. *Hutchinson.* vol. 1, p. 277

3. Notwithstanding a misjoinder of Plaintiffs, the Court permits a decree to be made at the hearing, when it appears that justice can be done to all parties notwithstanding the misjoinder. *Ibid.*

4. *M. J.*, the personal representative of a deceased trustee, together with infants, beneficially interested in a fund, by *M. J.*, their next friend, were co-Plaintiffs in a suit, the object of which was to make the tenant for life and his interest in the trust funds answerable for part of the trust funds which the tenant for life had applied to his own use: there were other parties interested in the restitution of the fund, who were made defendants. The Court, being of opinion that the trustee's assets might, in the progress of the suit, have to be resorted to for the purpose of making good the breach of trust, and that the interests of the infants and of *M. J.* would thereby ultimately become conflicting, dismissed the bill with costs, on the ground of the misjoinder of Plaintiffs, but without prejudice to any new bill. *Jacob* v. *Lucas.* vol. 1, p. 436

5. A person may maintain a suit as sole Plaintiff, though uniting in himself several characters, having distinct conflicting rights in the subject of a suit; but the Court will not in a suit so constituted decide on the conflicting rights vested in the Plaintiff, and by its decree will make provision for the protection of the Defendants from any prejudice which may arise from the peculiar constitution of the suit. *Blease* v. *Burgh.* vol. 2, p. 221

6. A suit was instituted by a husband and wife, and a decree made therein. It afterwards appeared that the property in question was limited to the wife's separate use. Held, upon a petition of the wife by a next friend, that the objection of misjoinder could not be then taken advantage of by a respondent who was not an accounting party. *Warren* v. *Buck.* vol. 4, p. 95

7. Property was given in trust "for the sole and absolute use" of a female infant. She afterwards married under age, and a settlement was made giving half to the wife for her separate use, and the other half to the husband. A bill was filed by the husband and wife, after the latter had come of age, against the trustees, seeking to charge them with a breach of trust. The Court thought the frame of the suit improper, but gave leave to amend; and the wife being, by amendment, made to sue by her next friend, a decree was made. *Davis* v. *Prout.* vol. 7, p. 288

8. The bill sought to charge trustees with mismanagement and misapplication of the trust estate. The answer insisted that one of the two co-Plaintiffs had acquiesced. The Court, upon motion, gave leave to amend by making such co-Plaintiff a Defendant, upon payment of the costs of the application, and giving security for the costs already incurred. The costs of the misjoinder were reserved to the hearing. *Bather* v. *Kearsley.* vol. 7, p. 545

9. A husband and wife joined, as co-Plaintiffs in a suit, in which the claim put forward was by the husband in right of his wife. He became bankrupt, and afterwards the wife alone filed a supplemental bill, stating a settlement (suppressed in the original bill), whereby the property had been settled to her separate use. Held, that she was entitled to relief, but only on the terms of her next friend consenting to become liable for the costs of the former proceedings, and paying the extra costs occasioned by the suppression of the settlement. *Howard* v. *Prince.* vol. 10, p. 294

10. A married woman being entitled to a share of the produce of the estate of a testator, joined her husband in selling and assigning it to a purchaser. The assignors and assignee having joined in a suit for its recovery, it was dismissed, at the hearing for misjoinder; but the objection not having been previously taken, no costs were given. *Padwick* v. *Platt.* vol. 11, p. 503

11. A bill was filed by husband and wife partly in respect of the wife's separate estate; but she sued by her next friend. An objection for misjoinder was overruled. *Meddowcroft* v. *Campbell.* vol. 13, p. 184

12. A bill on behalf of all shareholders, complaining of transactions in which some have concurred, cannot be sustained, for there is a misjoinder. *Kent* v. *Jackson.* vol. 14, p. 367

MISREPRESENTATION.

[*See* CONTRIBUTORY, FRAUD, MISTAKE, SPECIFIC PERFORMANCE (WITH COM-

PENSATION), VENDOR AND PURCHASER (MISREPRESENTATION).]

1. Distinction between misrepresentations giving a legal and those giving an equitable remedy. *Whitmore* v. *Mackeson.* vol. 16, p. 126
2. The Court (assuming that the Plaintiffs had lent *A. B.* money, on the security, first, of a leasehold; secondly, of a policy; and thirdly, of the written representation of his solicitor as to his solvency), Held, that the Plaintiffs could not make the solicitor liable for misrepresentation, without shewing that they had taken proper steps to make the other securities available. *Ibid.*
3. The Plaintiffs lent *A. B.* money on mortgage on the application of his solicitor, who assured them, in writing, that in his opinion he would be able to pay the amount. The Plaintiffs, alleging this to be a false and fraudulent misrepresentation, instituted a suit in equity to make the solicitor personally liable. Held, that their remedy, if any, was at law. *Ibid.*
4. Where a party, by misrepresentation, draws another into a contract, such party may be compelled to make good the representation, if that be possible, but if it be impossible, the person deceived may avoid the contract. The same principle applies, though the party at the time believed the statement to be true, if in the due discharge of his duty, he ought to have known otherwise. *Pulsford* v. *Richards.* vol. 17, p. 87
5. Third parties, who by false representations induce others to enter into contracts, are estopped from afterwards falsifying their statement, and, if necessary, may be compelled to make them good. But the false statement of one, not a party to the agreement entered into on the faith of it, is not a ground for avoiding it. *Ibid.*
6. Misrepresentations may be either by a suppression of the truth or an assertion of what is false; but to be the ground for avoiding the contract, the representation must be one "*dans locum contractui*," or such that it is reasonable to infer, that in its absence the party deceived would not have entered into the contract. *Ibid.*
7. A father represented to the intended husband of his daughter, that, on the death of himself and his wife, the daughter would have 10,000*l.* at the very least; that he had made no eldest son, and that all his children should share equally; and the intended husband at the time made a memorandum in writing of the representation. Heads of marriage articles were prepared by or by the direction of the father providing, among other things, that he should covenant that the daughter would, at the death of himself and his wife, be entitled to 10,000*l.* and upwards. The settlement made in pursuance of these instructions did not contain any such covenant, but there was a recital that the daughter would be entitled to the 10,000*l.*, and the father was a party to the deed. The share coming to the daughter under her father and mother's marriage settlement fell short of 10,000*l.*, and no addition was made to it by the father in his lifetime or by will. Held, that the representation made by the father must be made good by him, and that his estate must make up the deficiency. *Bold* v. *Hutchinson.* vol. 20, p. 250
8. Where, upon the marriage of two persons, a third party makes a representation, upon the faith of which that marriage takes place, he will be bound to make good that representation. *Ibid.* (See *De Beil* v. *Thompson.* vol. 3, p. 469 *Moorhouse* v. *Colvin.* vol. 15, p. 341 *Money* v. *Jorden.* vol. 15, p. 372)
9. Where a person seeks to make a third party make good representations made by him on his marriage, he must establish, and that clearly, first, that sufficient representations were made; and secondly, that the marriage took place on the faith of them. *Jameson* v. *Stein.* vol. 21, p. 5
10. The Plaintiff and Defendant were directors in a railway company. The Plaintiff was desirous of obtaining 1,000 "unallotted" shares, in order to promote its success. The Defendant clandestinely caused 1,000 of his own "allotted" shares to be transferred to the Plaintiff. The transaction took place in *July*, 1853, but was discovered in *June*, 1854, and the bill was filed in *November* following. The Court held that the transaction was void, and set it aside, and held, there had been no laches. *Blake* v. *Mowatt.* vol. 21, p. 603
11. In cases of this description, in Courts of Equity, the moral obligation is coextensive with, and not different from, the legal obligation where the representations are expressed in clear and distinct language; but vague and ambiguous representations made to persons, leading them to form an opinion or belief, though morally are not legally binding. *Ibid.*
12. A husband and wife alleged, that, on their marriage, the wife's father stated in a letter, which, however, they stated had been destroyed, "that he could do no more for her than he had done, and that he had settled his *W.* estate upon her." He had, in fact, previously settled that estate on her, but subject to a prior charge of 5,000*l.* They sought to have the representation made good, by payment of the 5,000*l.* out of the father's

estate. The Court doubted whether the principle applied to such a representation, and also whether the marriage took place on the faith of it, and refused relief. *Ibid.*

13. The Plaintiff had, during his minority, accepted bills to a considerable amount, which he handed to *A.*, who raised money on them from *B.* and *C.*, in whose hands the bills had remained. Immediately on coming of age, the Plaintiff in the belief, brought about by the misrepresentations of *A.*, *B.* and *C.*, that the bills were in circulation, and that they had bought them up for the purpose, gave to *B.* and *C.* securities for the amount of the bills in their hands. The securities were set aside unconditionally, on the ground of the misrepresentation and the want of due information. *Kay* v. *Smith.* vol. 21, p. 522

14. A first mortgagee with power of sale had entered into arrangements, but not a binding contract, for the advantageous sale of part of the mortgaged property. After this he bought up, at a reduced price, the interest of the second mortgagee, without informing him of the arrangements for sale. Held, that he was not bound to inform the second mortgagee of the opportunity he had of selling; and a bill, to set aside the sale on the ground of suppression of information, was dismissed with costs. *Dolman* v. *Nokes.* vol. 22, p. 402

15. A public company is not bound by the misrepresentation made by its manager or secretary without its sanction, who cannot be considered its agents to commit a fraud; but the company will be answerable for misrepresentations made in a report of the directors, sanctioned by a general meeting. *Ayre's case. In re Deposit and General Life Assurance Company.* vol. 25, p. 513

16. Directors having entered into a contract, *ultra vires*, and which was not binding on the company. Held, that it could be neither specifically performed, nor could the Court order them to make good their representation. *Ellis* v. *Colman, Bates and Husler.* vol. 25, p. 662

17. A parol promise by a father, prior to the marriage of his son, to make a future provision for him, his wife and children, cannot be enforced, if the marriage did not take place by reason of any reliance on such promise, or if it was not acted on as a reason and consideration for the marriage. *Goldicutt* v. *Townshend.* vol. 28, p. 445

18. A legatee charged the share to which he was entitled, under his father's will, to *A. B.*, who gave notice to the executor. The executor indorsed on the notice that he had no objection to pay the money "that might become due" to the legatee "on the final distribution of his father's property." There was at this time a prior charge, of which the executor had notice, but he did not disclose it to *A. B.* The executor, on a subsequent occasion, also represented that the legatee's share would certainly be as much as 1,500*l.*, which estimate turned out to be erroneous. Held, that the executor was not liable for the suppression of the existence of the first charge or bound to make good the representation as to the value of the share. *Stephens* v. *Venables.* (No. 2.) vol. 31, p. 124

19. By a marriage settlement, it was recited that the husband was absolutely entitled to a sum of 7,000*l.* part of the personal estate of a deceased person then being administered by this Court. The husband settled 5,000*l.* part of the 7,000*l.*, but the assets proved insufficient to pay even the 5,000*l.* Held, that this was not a representation which the husband was bound to make good, and that the deficiency did not constitute a debt payable out of his assets. *Evans* v. *Wyatt.* vol. 31, p. 217

20. The Plaintiff agreed to purchase a share in a partnership business, on the footing of a balance sheet prepared by an accountant employed by the vendor, which all parties believed (with the exception of slight errors) to be, and was treated as, generally correct. It turned out to be grossly inaccurate in regard to the existing liability. The Court set aside the contract. *Charlesworth* v. *Jennings.* vol. 34, p. 96

21. Property was sold which was represented as standing on a fine vein of anthracite coal. Held, that the doctrine of "*caveat emptor*" applied, and that it was the business of the purchaser to inquire as to the extent to which the coal had already been worked. *Colly* v. *Gadsden.* vol. 34, p. 416

22. Sale, by an old woman of eighty-eight, of an estate in possession for one-fourth its value set aside, she being in distress and without legal assistance, and being also under the impression that she could not make out a good title, while the purchaser, knowing that she could, concealed the fact from her. *Summers* v. *Griffiths.* vol. 35, p. 27

MISTAKE.

[*See* COMPROMISE, RELEASE, REFORMING DEED.]

1. When parties whose rights are questionable have equal knowledge of facts and equal means of ascertaining what their rights really are, and they fairly endeavour to settle their respective claims

among themselves, every court feels disposed to support the conclusions or agreements to which they may fairly come at the time, and that, notwithstanding the subsequent discovery of common error. *Pickering* v. *Pickering*. vol. 2, p. 31

2. An estate directed to be sold was limited to *A.* for life, and (as was then supposed) a moiety thereof was, as real estate, limited to *B.* in remainder. *A.* conveyed, and *B.* confirmed *B.*'s moiety and all their estate, &c. therein by way of mortgage, and they further assured it by fine. It turned out that *B.* had one-fifth only in remainder as personalty. Held, that *A.*'s interest in one-fifth only was affected by the mortgage. *Grieveson* v. *Kirsopp*. vol. 5, p. 283

3. A fund was held on trust for one for life, with remainder between *B.* and *C.* equally, if living, with benefit of survivorship between them. *B.* sold his reversionary interest. At the time of the sale *C.* was dead, but the fact was neither known to the vendor nor to the purchaser. Held, that the sale could not stand. *Colyer* v. *Clay*. vol. 7, p. 188

4. A grant of annuity set aside on the ground of a mistake made in calculating the amount payable upon a given principle. *Carpmael* v. *Powis*. vol. 10, p. 36

5. The Plaintiff, for a given sum, agreed to grant the Defendant a life annuity to be calculated from the amount of a corresponding government annuity. The Defendant's agent agreed to ascertain the amount. He accordingly did so *bonâ fide*, but the information he received afterwards turned out to be inaccurate. The Plaintiff, relying on this information, granted an annuity based thereon, and which was of too large an amount. The Defendant was aware of the mode of calculation; but the Court was unable to come to the conclusion, that the Defendant would have entered into the agreement, if the correct amount of the annuity had been stated. Held, that as there had been a mistake on both sides, the deed could not be rectified, but must be set aside altogether. Held also, that as the price of a government annuity was so easily ascertainable, the Plaintiff, if he had either relied on his own knowledge or on others unconnected with the Defendant, would not have been entitled to relief. *Ibid.*

6. A testator, after reciting, inaccurately, that his wife was entitled for life to 39,000*l.*, settled on his marriage, which he stated would, at 4 per cent., yield 1,560*l.*, directed his trustees to add an annuity of 440*l.* to raise his wife's jointure to 2,000*l.* Held, that the widow was entitled to have her annuity made up to 2,000*l.* at all events. *Ousseley* v. *Anstruther*. vol. 10, p. 459

7. *A. B.* was the first mortgagee of *Blackacre*, and *C. D.* was the first mortgagee of *Whiteacre* and the second mortgagee of *Blackacre*, *A. B.* and *C. D.* demised both properties together, reserving the whole rent to *A. B.* The parties did not seem to have observed the distinction between their rights in respect of the two properties. The Court relieved *C. D.* from the mistake, by ordering *A. B.* to pay him an apportionment of the whole rent in respect of *Whiteacre*. *Harryman* v. *Collins*. vol. 18, p. 11

8. If one party be acting under a misapprehension, and the other is accessory to it, although unintentionally, the transaction cannot stand. *Hartopp* v. *Hartopp*. vol. 21, p. 259

9. *A. B.* bequeathed all his real and personal estate to *C. D.*; but he stated, that on his death, his father's property would, under his father's will, devolve on his nephews. This was not the fact, for it formed part of *A. B.*'s estate. Held, that the father's property did not pass under *A. B.*'s will. *Circuitt* v. *Perry*. vol. 23, p. 275

10. The Defendant, by letter, offered to sell some property to the Plaintiff for 1,250*l.*; the Plaintiff, by letter, accepted the offer. The Defendant had, by mistake, inserted 1,250*l.* instead of 2,250*l.* in his letter, and he immediately gave notice of the error. The Court refused to enforce the contract. *Webster* v. *Cecil*. vol. 30, p. 62

11. The Plaintiff purchased a small freehold property by auction. The Court refused specific performance, on the ground of a mistake and a misunderstanding between the vendor and the auctioneer as to the reserved price. *Day* v. *Wells*. vol. 30, p. 220

12. The Defendant signed an agreement to take from the Plaintiff a lease of a house at the rent of 230*l.*, and on the terms of a lease on which the agreement was written, which erroneously stated the rental to be 130*l.* A lease was afterwards executed, in which the rent was erroneously stated to be 130*l.* The error, on the part of the lessor, was proved, and the Court considered that the lessee must have perceived the discrepancy between the amount of rent previously stated by the Plaintiff and specified in the agreement and that reserved by the lease. Held, that the Plaintiff was not entitled to have the lease reformed, but that the proper relief was to give the lessee the option of taking the reformed lease or of rejecting it, paying, in the latter case, a rental for the past occupation and a mortgage on the lease created by such lessee. *Garrard* v. *Frankel*. vol. 30, p. 445

13. Bill by two sisters to reform, on the ground of mistake, a deed entered into

between them and their two brothers for making a provision for a third brother and his family, dismissed with costs. *Bentley* v. *Mackay.* vol 31, p. 143

14. A property, which was subject to a mortgage of 1,400*l.*, was settled by a deed, which erroneously stated that it was subject to a mortgage of 1,200*l.* The error being clearly proved, the Court, as between the parties claiming under the settlement, and under the peculiar circumstances, treated the estate as subject to 1,400*l.*, without a cross bill to rectify the settlement. *Scholefield* v. *Lockwood.* (No. 2.) vol. 32, p. 436

15. In *October* the Plaintiff, who was entitled to an English estate during the life of *J. W.*, and that without impeachment of waste, entered into an agreement with the remaindermen as to the timber on the estate. Unknown to all parties, *J. W.* had died in *India* in *September* previous, whereby all the Plaintiff's interest in the timber had ceased. Held, that the contract having been entered into by mistake was not binding in equity upon the remaindermen. *Cochrane* v. *Willis.* vol. 34, p. 359

"MONEY."

[*See* DESCRIPTION OF GIFT.]

1. Stock, held, upon the context of a will, not to pass by the word "money." *Willis* v. *Plaskett.* vol. 4, p. 208

2. A testatrix first directed her funeral expenses to be paid, and she gave the remainder of her *moneys* to *B.*, and her wearing apparel, trinkets, and all other property, whatsoever and wheresoever, to *C.* Held, that money in the funds did not pass to *B. Ibid.*

3. Stock in the funds held in trust for the wife for life, with remainder as the husband should appoint, and in default to his executors, administrators, or assigns. Held, not to pass under the will of the husband by the words "money he might have in the books of the Governor and Company of the Bank of *England.*" *Howell* v. *Gayler.* vol. 5, p. 157

4. The word "money" by itself, in a will, means money strictly and nothing else, but when used in connection with other words, it may have a much more extended signification. *Glendening* v. *Glendening.* vol. 9, p. 324

5. *South Sea* Stock and £3 : 5*s.* per Cents. held, on the context, to pass by the expression "surplus money." *Newman* v. *Newman.* (No. 1.) vol. 26, p. 218

6. A testatrix bequeathed specific sums of *South Sea* Stock and £3 : 5*s.* per Cents. to her sister for life, and, at her death, she left "this money" in trust to her niece, to pay certain legacies, which did not exhaust the whole. She authorized her sister and niece (who were her executrixes) to sell out the residue of "her money" in the £3 : 5*s.* per Cents. over the sum she had mentioned, for payment of her debts, and proceeded: "then, if there is any surplus money, I give it to my niece. Held, that the niece took the surplus of both the funds. *Newman* v. *Newman.* (No. 1.) vol. 26, p. 218

7. A testatrix whose only property consisted of a small sum of Consols, bequeathed, after the payment of her debts, "all the money she might die possessed of" to her brother and sister, and she gave her other property to her executor. Held, that the stock passed to the brother and sister under the word "money." *Chapman* v. *Reynolds.* vol. 28, p. 221

8. General residue of personal estate held to pass under the words "residue of money," the will commencing with a general bequest of everything "in trust for the following purposes," and the gift of money being preceded by bequests of specific chattels. *Montagu* v. *The Earl of Sandwich.* vol. 33, p. 324

9. The word "money," coupled with the word "cash," held confined to money strictly and properly so called. *Nevinson* v. *Lady Lennard.* vol. 34, p. 487

10. The word "money," standing by itself, is confined to the proper meaning of that word; yet, if money be given after a direction to pay debts, legacies and funeral and testamentary expenses, or with any other words which denote an intention, on the part of the testator, to dispose of the whole of his estate, it will be construed as synonymous with "property." *Ibid.*

11. An unpaid legacy bequeathed to a testatrix, held not to pass under her will by the words "moneys and securities for money." *Re Mason's Will.* vol. 34, p. 494

12. A testator gave a house and 300*l.* "of lawful money" to his daughter, and "the remainder of all his moneys, in whatever it may be, in bonds or Consols or anything else," to his wife. Held, that the wife was entitled to all the testator's residuary personal estate invested in any security, including a life policy, but not to a leasehold or furniture or chattels. *Stooke* v. *Stooke.* vol. 35, p. 396

MORTGAGE.

[*See* CONDITIONAL SALE, COSTS (ADMINISTRATION), EQUITABLE MORTGAGE, INTEREST, LIEN, MERGER OF CHARGE, MORTGAGE (EXONERATION), MORTGAGE (FURTHER ADVANCES), MORTGAGE (REDEMPTION), MORTGAGE (SALE BY COURT), MORTGAGE (OF WIFE'S PROPERTY), MORTGAGOR AND MORTGAGEE (ACCOUNTS), MORTGAGOR AND

MORTGAGEE (COSTS), NOTICE, POWER TO SELL OR MORTGAGE, PRIORITY, RECEIVER, STATUTE OF LIMITATIONS (MORTGAGE), TACKING.]

1. Where a mortgage is made to several persons jointly, they are, in equity, tenants in common of the mortgage money, and the representatives of such of them as may be dead are necessary parties with the survivor to a bill for foreclosure or redemption. *Vickers* v. *Cowell*. vol. 1, p. 529
2. A testator having an estate subject to a mortgage bearing interest at 5*l.* per cent. devised it to *B.*, "he paying the mortgage thereon; and he bequeathed to the mortgagee, through his executor, 2,000*l.* to exonerate the estate. The mortgagee foreclosed, and it having been decided, that the devisee was entitled to the 2,000*l.*, it was held that he was entitled to interest thereon after the rate of 3*l.*, and not 5*l.*, per cent. *Lockhart* v. *Hardy*. vol. 10, p. 292
3. Right of prior as against a subsequent mortgagee to enforce all his remedies at the same time. *Cockell* v. *Bacon*. vol. 16, p. 158
4. *A.* being tenant for life of an estate, and the owner of a charge of 20,000*l.* thereon, mortgaged the 20,000*l.* to *B.* for 14,000*l.* He afterwards mortgaged it and other property to *C.* for 24,000*l.* *A.* died, and the succeeding tenant for life prayed a redemption against *C.* on payment of such a sum as was due on account of the 6,000*l.* (thus splitting the charge of 20,000*l.* into two portions). Held, that both *B.* and the executors of *A.* were necessary parties to such a suit. *Lord Kensington* v. *Bouverie*. vol. 16, p. 194
5. A trust for sale of real estate held not to authorize a mortgage. Real estate was conveyed to trustees upon trust to "sell and dispose" thereof, and out of the money to arise, "levy, raise and pay, two sums of 150*l.* and 1,000*l.*, and invest the residue of the moneys to arise for the husband and wife for their lives, and afterwards for their children, and, in default, as the wife should appoint by will. Held, that the trustees were not justified in raising these two sums by mortgage, inasmuch as a conversion of the estate into money out and out was intended. *Page* v. *Cooper*. vol. 16, p. 396
6. *A. B.* died in 1831 intestate and without heirs, having mortgaged his estate in fee. Held, that the mortgagee could not, in 1852, make a good title to the fee; for, although he took the equity of redemption as against the Crown, yet he held it subject to *A. B.*'s debts, and there was no proof of their having been satisfied. *Beale* v. *Symonds*. vol. 16, p. 406
7. A mortgagor contracted to sell the estate, and one of the conditions was, that the purchaser should pay a deposit to the auctioneer. The mortgagee afterwards concurred in and adopted the contract. A loss having occurred by the insolvency of the auctioneer,—Held, that as between the purchaser and mortgagee, the latter stood in the shoes of the vendor and must bear the loss. *Rowe* v. *May*. vol. 18, p. 613
8. *A.* mortgaged to *B.* his reversionary interest in a sum of 3,681*l.* stock, which the deed represented as standing in the names of two executors of a testator to secure three annuities. *A.* gave notice to the executors. There was no such sum standing in the names of the executors, but there was one sum of 2,080*l.* standing in the name of the testator, and a second sum of 2,451*l.* standing in the name of one of the executors, to answer the annuities. A subsequent incumbrancer on the whole fund also gave notice to the executor. Held, that *A.*'s security was limited to 3,681*l.* stock. *Woodburn* v. *Grant*. vol. 22, p. 483
9. *A.* made two equitable mortgages of two several estates, the one to *A.* and the other to *B.* He then executed a legal mortgage of both to *C.*, who had constructive notice of the prior equitable mortgages. *B.* obtained a transfer of *A.*'s mortgage. Held, that *C.* could only redeem *B.*, on payment of both debts. *Tweedale* v. *Tweedale*. vol. 23, p. 541
10. *W. M.*, in 1846, mortgaged some property to the Plaintiffs, for securing a debt of 11,300*l.* In 1857 the Plaintiffs assigned to trustees, for their creditors, this and another debt due from *W. M.*, and all securities for the same (except the mortgage of 1846, and the premises thereby assigned, and the benefit and advantage to arise therefrom). The surplus was to be paid to the Plaintiffs, and there was a proviso, that the Plaintiffs were to have the property comprised in the mortgage for their own benefit. Held, that as against a subsequent judgment creditor of *W. M.*, the Plaintiffs could maintain a bill to foreclose the mortgage. *Morley* v. *Morley*. vol. 25, p. 253
11. In conveyances subsequent to the 26th of *April*, 1855, to purchasers and mortgagees of lands, tenements and hereditaments, which are mortgaged, the judgment creditors of the mortgagees of the property, who are paid off prior to or at the time of the execution of the conveyance, need not concur. *Greaves* v. *Wilson*. (No. 2.) vol. 25, p. 434
12. If a mortgagee so deals with the mortgaged estate as to render it impossible for him to restore it on full payment, this Court will prevent his suing at law to recover the mortgage money. *Palmer* v. *Hendrie*. vol. 27, p. 349

13. An Act of Parliament authorized the lessees of mines to make a railroad to a canal, through the intervening lands, on making compensation. The lessees entered into an agreement with a mortgagor in possession for making the railway and paying an annual rent. The mortgagee afterwards entered into possession and received the rent for some time. Held, that the mortgagee and all claiming under him were bound by the agreement. *Mold* v. *Wheatcroft.* vol. 27, p. 510

14. A mortgagee concurred with the transferee of the equity of redemption in selling the property, and he allowed such transferee to receive the purchase-money. Held, that the mortgagee could not afterwards sue the mortgagor for the debt, and he was perpetually restrained from doing so, and ordered to pay the costs of the suit. *Palmer* v. *Hendrie.* (No. 2.) vol. 28, p. 341

15. A testator devised his own estates in trust to pay the mortgages on his estate "as well settled and unsettled." Part of the settled estates consisted of leaseholds, in which the testator had a life interest only, but after the date of his will the fee of it was conveyed to him, he having purchased the reversion. Immediately after which, he and his eldest son mortgaged it for the purchase-money, and the equity of redemption was limited to them jointly, and the surplus produce of the sale was reserved to them "according to their respective rights and interests therein." Held, that this mortgage was payable out of the testator's own estate under the trusts of the will. *Lord Hastings* v. *Astley.* vol. 30, p. 260

16. In a suit to administer a mortgagor's estate, the mortgagee, who was not a party, came in and consented to a sale. The produce formed the whole assets and was less than the mortgage. Held, that the mortgagee was entitled to the whole fund, after payment of the costs of sale. *Dighton* v. *Withers.* vol. 31, p. 423

17. When a first mortgagee sells the mortgaged property to the second mortgagee, by virtue of a power of sale, the latter obtains, as against the mortgagor, an irredeemable title to the property. *Shaw* v. *Bunny.* vol. 33, p. 494

18. The first and second mortgagees of an estate had power of sale and of giving good receipts. They joined together in selling, and each received his portion of the purchase-money, for which they gave a receipt to the purchaser. Held, that a title depending on this sale was perfectly good. *M'Carogher* v. *Whieldon.* vol. 34, p. 107

19. A tenant for life of a real estate bequeathed all money due to him on mortgage. Held, that a charge on the estate of 10,000*l.*, to which the testator was entitled and which was secured by means of a term vested in a trustee, did not pass as a mortgage. *Earl Poulett* v. *Hood,* vol. 35, p. 234

MORTGAGE (EXONERATION.)

1. Bill by the owner against his mortgagees and the trustee of a fund, to compel payment, held to be a suit for administration and not redemption, and the costs of all parties were ordered to be paid out of the fund in the first instance. *Bryant* v. *Blackwell.* vol. 15, p. 44

2. A mortgagee had a power of sale, and of retaining his costs, charges, and expenses. He sold; but the purchaser resisted the completion, on the ground of misdescription. Being advised by counsel that the objection was untenable, he filed a bill for specific performance, which was dismissed with costs. Held, upon a redemption, that he could not charge the costs of the suit. *Peers* v. *Ceeley.* vol. 15, p. 209

3. Where a mortgagor makes an unconditional tender to the mortgagee of a sum and the mortgagee refuses to accept it, he does so at his own peril; and if the amount tendered was all that was due, the mortgagee must bear the costs of a subsequent suit for redemption. *Harmer* v. *Priestley.* vol. 16, p. 569

4. A suit between two shipowners, and the mortgagee of one, was dealt with as in an administration suit, by first directing the payment of all the costs (except the mortgagee's) out of the fund, and distributing the residue *pro ratâ*. *Alexander* v. *Simms.* vol. 20, p. 123

5. When the interest of a mortgage is regularly paid, and the mortgagor has never been called on to discharge the principal, the costs of a transfer of the mortgage, made by the mortgagee without any communication with the mortgagor, are not properly chargeable against him. *In re Radcliffe.* vol. 22, p. 201

6. *A.* mortgaged to *B.*, and the securities were prepared by a firm of solicitors in which *B.* was a partner. The firm acted for the mortgagor. Held, that *B.*'s security did not extend to the bill of costs of the firm. *Gregg* v. *Slater.* vol. 22, p. 314

7. Generally, the costs of a mortgagee are added to his security, and in whatever rank or order the security stands, his costs are united to it and form part of it; but if he institute a suit for the administration of the estate of the deceased mortgagor, his costs are those of a Plaintiff in an ordinary administration suit. *Wright* v. *Kirby.* vol. 23, p. 463

8. When a *puisné* incumbrancer sues for and recovers a fund for the benefit of all, his costs are paid, in the first instance, out of the fund recovered. *Ibid.*

9. An estate was greatly incumbered. The first charge was an annuity, and, in default of payment, the annuitant had a power to sell and invest the produce in the purchase of a similar annuity. The grantor reserved a power of repurchase. The annuitant having sold the estate, the fifth incumbrancer filed a bill to repurchase the annuity and distribute the produce. Held, that the Plaintiff's costs were the first charge on the fund, and that the costs of the other incumbrancers must be added to their securities. *Wright* v. *Kirby*. vol. 23, p. 463

10. The Plaintiff, a second mortgagee, obtained the costs of so much of a suit for redemption as had been incurred by the Defendants, the first mortgagees unsuccessfully disputing his rights to redeem. But the Court, instead of ordering those costs to be paid to the Plaintiff personally, directed them to be set off in case of the Plaintiff's redeeming. *Wheaton* v. *Graham*. vol. 24, p. 483

11. *A. B.* mortgaged estate *X.* for 800*l.*, and, on the same day, he charged estate *Y.*, in aid, to the extent of 200*l.* *A. B.* died, having devised estate *Y.*, but intestate as to estate *X.* Held, that the whole 800*l.* was, as between the devisees and heir, primarily chargeable on estate *X.* *Stringer* v. *Harper*. vol. 26, p. 33

12. An estate was subject to mortgages of 7,000*l.* created by the testator, and of 13,000*l.* created by his ancestor; but the testator had consolidated them into one mortgage for 20,000*l.* which he had covenanted to pay. The testator directed his debts to be paid out of his personal estate, but if insufficient, he charged them on his real estate. He devised his estates "subject nevertheless to the mortgages affecting the same." The testator died in 1840. Held, that the devisee of the estate did not take *cum onere*, but was entitled to have the whole mortgage debt paid out of the testator's personal estate. *Townshend* v. *Mostyn*. vol. 26, p. 72

13. A mortgagee of a 1,000 years' term filed a bill for foreclosure. At the hearing, by arrangement, a decree was made for the sale of the fee. It produced a little more than sufficient to pay the mortgage. The Defendants declining an inquiry as to the value of the reversion in fee. Held, that the Plaintiff's costs had priority over those of the Defendant. *Cutfield* v. *Richards*. vol. 26, p. 241

14. A testator gave one-third of the rents of his real estate to his widow for life, and he devised an estate at *B.*, in thirtieth parts, to his children as tenants in common. The residue of his real and personal estate, "after paying his mortgage and other debts," he left to be divided into thirtieth parts, and to be taken by the same and in the same proportions as the estate at *B.* Held, that the widow took no interest in the personalty, and that the mortgages were payable primarily out of the residue and not out of the mortgaged estate, under the 17 & 18 *Vict.* c. 113. *Greated* v. *Greated*. vol. 26, p. 621

15. Distinction in regard to the operation of *Locke King's* Act (17 & 18 *Vict.* c. 113) between directing the payment of a mortgage on a devised estate from a particular source, and from signifying an intention that it should be paid out of the personal estate. *Allen* v. *Allen*. vol. 30, p. 395

16. The 17 & 18 *Vict.* c. 113 (*Locke King's* Act) only applies where there is a defined and specified charge on a specified estate; and a general charge on real estate by a testator in aid of his personal estate does not come within the definition of a "mortgage" on the real estate in the hands of the devisee, unless and until the amount has been accurately defined and the devisee has expressly taken the estate subject to such ascertained charge. *Hepworth* v. *Hill*. vol. 30, p. 476

17. A decree was made in a suit for administration of a mortgagor's estate. The mortgagee afterwards filed a foreclosure bill, but subsequently obtained full payment in the administration suit. Held, that he was entitled to stay proceedings in his own suit and to have the costs of it. *Brooksbank* v. *Higginbottom*; *Bent* v. *Buckley*. vol. 31, p. 35

18. Devisees of a real estate which had been mortgaged by the testator held entitled to have the mortgage paid out of the other real and personal estate devised for payment of debts, notwithstanding *Locke King's* Act (17 & 18 *Vict.* c. 113). *Newman* v. *Wilson*. vol. 31, p. 33

19. A direction to pay all debts out of the testator's personal estate is not a sufficient expression of a "contrary or other intention," so as to prevent a devisee of a mortgaged estate taking *cum onere* under *Locke King's* Act (17 & 18 *Vict.* c. 113). *Rowson* v. *Harrison*. vol. 31, p. 207

20. *A. B.* mortgaged freeholds and leaseholds together and died intestate in 1857. Held (as between the heir and administrator), that the freeholds and leaseholds must bear the burden rateably. *Evans* v. *Wyatt*. vol. 31, p. 217

21. In 1775 *A. B.* became owner in fee of estates *W.* and *L.* The *W.* estate was subject to mortgages amounting to 5,344*l.*, and the *L.* estate to a mortgage amounting to 2,200*l.*, all of which were created by *A. B.*'s ancestor. In 1787 *A. B.* mortgaged the *L.* estate, for 8,000*l.*, reserving the equity of redemption to himself, and personally covenanting to pay the money out of this sum. He paid off

the three mortgages on the *W.* estate; *A. B.* died in 1806. Held, as between the representatives of *A. B.*, that the mortgage was primarily payable out of *A. B.*'s personal estate. *Bagot* v. *Bagot.* vol. 34, p. 134

22. A bill by a person entitled to a mortgaged estate, under the mortgagor's will, against the mortgagee and the mortgagor's representative, to have the mortgagor's estate applied in payment of the mortgage, cannot be sustained. *Hughes* v. *Cook.* vol. 34, p. 407

23. The Court sanctioned the raising of money by mortgage of an infant's estate, but after expenses had been incurred by the intended mortgagee in investigating the title, the matter went off without his default. He was allowed his costs out of the estate. *Craggs* v. *Gray.* vol. 35, p. 166

MORTGAGE (FORECLOSURE).

1. Form of decree in a foreclosure suit, where *A.*, whose estate was already mortgaged to the Plaintiff, joined *B.*, as his surety, in a mortgage to the Plaintiff of both their estates for a further sum. *Aldworth* v. *Robinson.* vol. 2, p. 287

2. In a foreclosure suit, an order to enlarge the time for payment of the mortgage money is by no means of course, but may be refused where no excuse for the default is stated, and the security does not appear to be ample. *Eyre* v. *Hanson.* vol. 2, p. 478

3. The usual condition on which it is granted is, on payment of interest and costs before the time appointed by the Master for payment of the whole; in this case, however, it was ordered, that upon payment of the interest and costs within a month, the time should be enlarged for five months. *Ibid.*

4. A mortgagee received rents between Master's report and the day fixed for payment. Default being made: Held, that the mortgagee was not then entitled to an order absolute. *Garlick* v. *Johnson.* vol. 4, p. 154

5. A mortgagee can sustain a bill of foreclosure against the mortgagor and subsequent mortgagees, without making the mortgagee prior to himself a party. *Richards* v. *Cooper.* vol. 5, p. 304

6. If a mortgagee receives rents after the Master's report, and before the day appointed for payment, there must be a further reference and account, and a new day appointed for payment. *Alden* v. *Foster.* vol. 5, p. 592

7. In a foreclosure suit, the mortgagee having received rents between the date of the Master's report and the day appointed for payment, the Court, on motion, referred it back to the Master to continue the accounts, and to fix a new day. *Ellis* v. *Griffiths.* vol. 7, p. 83

8. The decree in a foreclosure suit in *Ireland* is not a judgment for payment of the amount due, or of the balance after realizing the security. *Wilson* v. *Lady Dunsany.* vol. 8, p. 293

9. Where a mortgagee receives rents between the report and the day of payment, it is not the practice, on directing the accounts to be continued and the time to be extended, to order the mortgagor forthwith to pay the arrears of interest and costs. *Buchanan* v. *Greenway.* vol. 12, p. 355

10. Even in the case of infants, the Court will only extend the time for payment of the mortgage money, upon the terms of immediate payment of the interest and costs. *Coombe* v. *Stewart.* vol. 13, p. 111

11. Upon a bill of foreclosure by first mortgagee, there was a contest between the Defendants, the later mortgagees, as to their respective priorities. The Court held that it must, in the first instance, direct an inquiry. *Duberly* v. *Day.* vol. 14, p. 9

12. A decree for foreclosure being made, the mortgagee, after the accounts had been taken, incurred further costs in another proceeding. Held, that he could not, by petition, obtain an order to add them to his security. *Barron* v. *Lancefield.* vol. 17, p. 208

13. The relief to which a judgment creditor is entitled, under the 1 & 2 *Vict.* c. 110, is a foreclosure, and not a sale. *Jones* v. *Bailey.* vol. 17, p. 582

14. An equitable mortgagee, as of right, is entitled to a foreclosure and not to a sale. *Cox* v. *Toole.* vol. 20, p. 145

15. A foreclosure was decreed in default of payment to three mortgagees, who were entitled "on a joint account." Before the day appointed for payment arrived one of the mortgagees died. Held, that the foreclosure could not be made absolute, but the Court appointed a new day for payment to the survivors. *Blackburn* v. *Caine.* vol. 22, p. 614

16. In a foreclosure suit, the parties to the mortgage deed and those claiming under them ought alone to be made parties. *Audsley* v. *Horn.* vol. 26, p. 195

17. Property was conveyed by a member of a building society to the trustees, on trust for sale, to secure the moneys due to the society. Held, that the trustees were not entitled to a foreclosure, but to a decree for sale. *Scweitzer* v. *Mayhew.* vol. 31, p. 37

18. In a foreclosure suit the money was to be paid between twelve and one. The agent of the mortgagees attended during the whole of that period, but without a power of attorney, to receive the money.

The mortgagees themselves only attended twenty-five minutes. No one attended to pay. The foreclosure was made absolute; and it appearing that the mortgagor could not be found, he was declared a trustee, and a vesting order was made, vesting the property in the mortgagees. *Lechmere* v. *Clamp*. (No. 3.)
vol. 31, p. 578

MORTGAGE (FURTHER ADVANCES).

1. An estate was mortgaged to *A*. for a sum and further advances. Afterwards *B*. obtained a charge on the estate by means of a judgment. Held, that further advances made to the mortgagor by *A*., after notice of the judgment, had no priority over *B*.'s claim. *Shaw* v. *Neale*.
vol. 20, p. 157
2. Where a first mortgage extends to future advances, further advances made by the first mortgagee, after notice of second mortgage, have no priority over the latter. *Rolt* v. *Hopkinson*. vol. 25, p. 461
3. In 1856 an equitable mortgage was created, and in 1858 it was transferred to the Plaintiffs, who made further advances, and obtained a legal mortgage three months afterwards. Held, that the Plaintiffs had priority over a charge created by a registered judgment obtained against the mortgagor two days before the transfer, for all their subsequent advances made *bonâ fide* and without notice of the judgment. *Cooke* v. *Wilton*.
vol. 29, p. 100

MORTGAGE (LEASEHOLDS).

1. Assignee of leaseholds accepting the benefit of an assignment, Held, in equity, liable on his part to the covenants contained in the assignment, though he did not execute it. *Willson* v. *Leonard*.
vol. 3, p. 373
(See *Close* v. *Wilberforce*. vol. 1, p. 112)
2. Liability of an equitable assignee of leaseholds, in possession, to the covenants in the lease. *Sanders* v. *Benson*.
vol. 4, p. 350
3. The liability of an equitable assignee of leaseholds is that of simple contract, and the Statute of Limitations limits his liability to six years after the cause of suit. *Ibid.*
4. Under an equitable mortgage by the simple deposit of a lease, unaccompanied by any memorandum, the tenants' fixtures will be included. *Williams* v. *Evans*.
vol. 23, p. 239
5. The Defendants, who were entitled to the equity of redemption of leaseholds charged with a mortgage, attempted to get rid of it by fraudulently incurring a forfeiture, which they induced the lessor to take advantage of. They afterwards obtained a new lease from him, which they sold. Held, that the new lease was subject to the mortgage, notwithstanding the 15 & 16 *Vict*. c. 76, s. 210, and a decree was made for payment by the Defendants of the mortgage with costs. *Hughes* v. *Howard*. vol. 25, p. 575
6. A mortgagee of leaseholds may take possession, even when there is no arrear of interest due, under circumstances which may not render him liable to account with annual rests, as when he enters in order to prevent a forfeiture for non-payment of ground rent or for non-assurance, &c. *Patch* v. *Wild*.
vol. 30, p. 99

MORTGAGE (REDEMPTION).

1. Decree against a mortgagee in possession, with costs; a tender having been made before suit, and it having been found, upon taking the accounts with annual rests (which was the point in the cause), that nothing was, at that time, due to the mortgagee. *Wilson* v. *Cluer*.
vol. 4, p. 214
2. Where an estate is mortgaged, the equity of redemption, unless there appears a clear intention of making a new settlement, remains subject to the old uses, or to the trusts of the original settlement. *Wood* v. *Wood*. vol. 7, p. 183
3. By a marriage settlement, a rent-charge of 200*l*. a year was secured to the wife for life, payable quarterly, with powers of distress, &c. To enable the husband to mortgage, the wife released her rent-charge to the mortgagee. The equity of redemption was reserved to the husband, who covenanted to convey other lands on the trusts of the settlement. The husband, by his will, gave his real and personal estate to his brother, on condition that he would allow his wife 300*l*. a year for life. Held, that the 200*l*. a year remained a valid charge on the equity of redemption; and secondly, that it was not satisfied by the 300*l*. a year. *Ibid.*
4. Judgment creditors are not allowed successive periods of three months for redemption. *Bates* v. *Hillcoat*.
vol. 16, p. 139
5. *A. B.*, a tenant in tail subject to an existing life estate, borrowed money on mortgage, and the tenant for life joined in order to bar the entail, and he covenanted to pay the interest during his life. By the same deed, the equity of redemption was resettled on *A. B.* for life, with remainder to his issue in tail, with limitations over. The Court, ten years afterwards, set aside the resettlement of the

equity of redemption, on the ground that there was no proof of a contract to vary the existing limitations. *Meadows* v. *Meadows*. vol. 16, p. 401

6. A tenant for life had a power to charge the settled estates with 20,000*l*. and interest. He accordingly charged them, and mortgaged the charge with property of his own for a much greater sum to several persons in succession. Held, that the remainderman was entitled to redeem the 20,000*l*. separately; and on a bill by the remainderman for redemption, accounts and inquiries were directed, for the purpose of ascertaining the amount due in respect of the charge of 20,000*l*., and the parties entitled to it. *Lord Kensington* v. *Bouverie*. vol. 19, p. 39
7. A mortgage was given for a judgment debt. There was a prior equitable charge, of which the mortgagee had no direct notice, but no investigation of title or production of deeds was had; besides which, by arrangement, the mortgagor's solicitor prepared the deed for the mortgagee's solicitor. The Court concluded, that the arrangement was to give a mortgage subject to existing charges, and also, that the mortgagee was affected by the notice possessed by the mortgagor's solicitor of the prior equitable title. *Tweedale* v. *Tweedale*. vol. 23, p. 341
8. *A*. made two equitable mortgages of two several estates, the one to *A*. and the other to *B*. He then executed a legal mortgage of both to *C*., who had constructive notice of the prior equitable mortgages. *B*. obtained a transfer of *A*.'s mortgage. Held, that *C*. could only redeem *B*. on payment of both debts. *Ibid*.
9. In a suit for redemption, by an advanced member of a building society, a sum was found due from him to the society beyond that secured by the mortgage. An order on the Plaintiff to pay it was made in a redemption suit. *Handley* v. *Farmer*. vol. 29, p. 362
10. A mortgage of property does not alter the existing limitations affecting it, except for the purpose of the mortgage, unless an express intention be shewn to resettle it. *Lord Hastings* v. *Astley*. vol. 30, p. 260
11. In a suit against *A*., an incumbrancer, and *B*., a sub-incumbrancer, to redeem the securities: Held, that the proper form of decree was, that upon the amount due from the Plaintiff to *A*. being paid into Court, both *A*. and *B*. should reconvey the estate and deliver the deeds to the Plaintiff, and that the Plaintiff was not bound to wait until the accounts had been taken and the equities settled as between *A*. and *B*. *Lysaght* v. *Westmacott*. vol. 33, p. 417
12. One seised of property in fee mortgaged it for a term, and afterwards died intestate and without heirs. Held, that his administratrix could not maintain a suit to redeem the mortgage, for the purpose of making the property available for the payment of the intestate's debts. *Catley* v. *Sampson*. vol. 33, p. 551

MORTGAGE (SALE BY COURT).

1. A mortgagee, who was a party to the suit, consented to a sale of the mortgaged property. Held, that he must produce and leave in the Master's office the title deeds which were necessary in order to complete such sale. *Livesey* v. *Harding*. vol. 1, p. 343
2. On a bill for foreclosure, an infant partially interested in the equity of redemption cannot adversely insist on a sale. *Farrow* v. *Rees*. vol. 4, p. 18
3. A decree for sale of an encumbered estate does not, of itself, alter the rights of parties. *Wild* v. *Lockhart*. vol. 10, p. 320
4. Principles on which the Court acts in directing a sale of a mortgaged estate, under the late act. *Hurst* v. *Hurst*. vol. 16, p. 372
5. Decree for sale ordered, at the request of the first and second mortgagees and the mortgagor, notwithstanding the third incumbrancer insisted on a decree for foreclosure and redemption, the value of the property not being proved. *Wickham* v. *Nicholson*. vol. 19, p. 38
6. A judgment creditor ranking after a first mortgagee, but prior in date to a further charge and to other judgments: Held, entitled to a foreclosure, although all the other parties insisted on a sale. *Messer* v. *Boyle*. vol. 21, p. 559
7. The Court may direct a sale, instead of a foreclosure, under the 15 & 16 *Vict*. c. 86, s. 48, without the consent of the mortgagor, and may direct the sale to take place at once. *Newman* v. *Selfe*. vol, 33, p. 522
8. The Court, in making a foreclosure decree, gave liberty to any party to apply in chambers for a sale. *Burmester* v. *Maxon*. vol. 35, p. 310

MORTGAGE (WIFE'S PROPERTY).

1. In 1772 a husband and wife mortgaged their respective estates for securing a debt of the husband. The husband died in 1776, and in 1782 the produce of his estate was brought into court and accumulated. The wife died in 1805, and in 1832 the husband's mortgage creditor, neglecting to prosecute his claim against

the husband's assets, obtained payment out of the produce of the wife's estate. In 1840 the heir of the husband petitioned for payment out of Court of the accumulated fund arising from the husband's estate, and a reference was made to ascertain the incumbrances thereon. An unpaid judgment creditor of the wife carried in a claim, which having been disallowed, as founded on a mere equity, he, in 1841, filed a bill against the heir of the husband and the representatives of the wife to establish his claim against the fund. Held, first, that the husband's debt having been paid out of the wife's estate, her estate had a right to be recouped out of the estate of the husband; and secondly, that the Plaintiff's claim was not barred by the Statute of Limitations. *Lancaster* v. *Evors.* vol. 10, p. 154

2. Estates of a husband were settled on the husband for life, with remainder to such uses as the husband and wife should appoint for raising money by mortgage, and in default to the wife for life, with remainder to the husband and wife in equal moieties. The husband and wife executed the power, for the purpose of raising money for the use of the husband. Held, that the wife's estate could not be considered as surety for the husband's debt, and that she had no equity to have the whole mortgage money paid out of the husband's moiety alone. *Scholefield* v. *Lockwood.* (No. 1.) vol. 32, p. 434

MORTGAGOR AND MORTGAGEE (ACCOUNTS).

1. The ordinary rule between mortgagor and mortgagee in possession is, that the Court will not direct an account with annual rests, if there was an arrear of interest due on the mortgage at the time of the mortgagee's taking possession. *Finch* v. *Brown.* vol. 3, p. 70

2. A property was subject to a mortgage for 1,000*l.*; *A. B.* agreed with the mortgagor for the purchase of a portion of of this property, and entered into possession without paying his purchase-money. In 1813 *A. B.* bought up the whole mortgage for 1,000*l.*, on which an arrear of interest of 101*l.* was due. There was at the same time due from *A. B.*, in respect of his purchase, 365*l.* Nothing further being paid by the mortgagor, *A. B.* in 1816 recovered possession of the property. The rents exceeded the amount of interest, and in 1823 the whole arrear of interest had been paid off. The Court refused to direct annual rests. *Ibid.*

3. Generally, annual rests are not directed against a mortgagee in possession, when the interest is in arrear at the time he took possession; and, in the absence of special circumstances, if a mortgagee is not liable to account with annual rests, when he enters into possession, he does not become so liable, until the whole of the mortgage debt has been paid off. *Finch* v. *Brown.* vol. 3, p. 70

4. Where, however, a mortgagee in possession came to an account with the mortgagor, whereby all the arrears of interest, &c. were converted into principal, leaving thereby no arrears, and he continued in possession, the rent being more than sufficient to keep down the interest, the Court directed annual rests. *Wilson* v. *Cluer.* vol. 3, p. 136

5. An estate was conveyed by *A.* to *B.*, upon trust, for ten years, to apply the rents in payment to *B.* of the interest and capital of 1,000*l.*, lent by *B.* to *A.*, and then to sell, pay off the residue of the 1,000*l.*, and hold the remainder in trust for the wife and children of *A.* The rents exceeded the interest. *B.* permitted *A.* to retain possession, and the rents were not applied as directed. Upon a bill by *B.* against *A.* and his wife and children for a sale: Held, that *B.* could not, until he took possession, be made liable for what, without his wilful default, he might have received, except upon a cross bill raising that question. *Bears* v. *Prior.* vol. 6, p. 183

6. A mortgagee in possession held liable for a damage occasioned by his pulling down two cottages on the property. *Sanden* v. *Hooper.* vol. 6, p. 246

7. A mortgagee in possession will be allowed for repairs necessary for the support of the property, and for doing that which is essential for the protection of the title of the mortgagor. If he has got the consent of the mortgagor or has given him notice in which he acquiesces, he may be allowed for money laid out in increasing the value of the property, but he is not justified in increasing the value of the estate by improvements so as to cripple the mortgagor's power of redemption. *Ibid.*

8. Mortgagee in possession, claiming upon a bill for redemption, to be allowed for substantial repairs and lasting improvement, but adducing no proof of any such expenditure, held not entitled to any inquiry on the subject. *Ibid.*

9. After foreclosure, the mortgagee fairly sold the estate for less than what was due to him. Held, that he could not afterwards recover from the mortgagor, upon his collateral personal securities, the amount still remaining unpaid. *Lockhart* v. *Hardy.* vol. 9, p. 349

10. Where a debt is secured by mortgage, covenant, and bond, the mortgagee may

pursue all his remedies at the same time. If he obtain full payment on the bond or covenant, the mortgagor becomes entitled to the estate, but if he obtain part payment only, he may go on with his foreclosure suit and foreclose with the remainder. On the other hand, if he forecloses first, and the value of the estate proves insufficient to satisfy the debt, he may, while the mortgaged estate remains in his power, sue on the bond or covenant, but he thereby opens the foreclosure, and the mortgagor may thereupon redeem. *Lockhart* v. *Hardy*. vol. 9, p. 349

11. A mortgagee in possession of part, and allowing the mortgagor to retain possession of the rest, is not, at the suit of a subsequent incumbrancer, to be charged, constructively, as in possession of the whole. *Soar* v. *Dalby*. vol. 15, p. 156
12. Where a mortgagee receives rents after the account has been taken, he must account, on affidavit, for the amount. *Oxenham* v. *Ellis*. vol. 18, p. 593
13. After the amount due to a mortgagee had been ascertained and paid, the mortgagee was held entitled to some allowance for crops, manure, &c., for which he remained liable to pay to an outgoing tenant of the mortgaged property. *Ibid.*
14. No account of bygone rents will be directed against a mortgagor in possession, nor against his agent, nor against a person claiming under his voluntary revocable deed. *Hele* v. *Lord Bexley*; *Whitfield* v. *Bowyer*; *Whitfield* v. *Knight*. vol. 20, p. 127
15. In a suit by a mortgagor for redemption, a decree was made for an account with annual rests. The Plaintiff died and the suit was abandoned; after which, the mortgagee instituted a suit for foreclosure. Held, that the decree must be the same and with annual rests. *Morris* v. *Islip*. vol. 20, p. 654
16. Liability of a mortgagee who gives notice to the tenants to pay him their rents, but does not take possession, whereby a loss is occasioned. *Heales* v. *M'Murray*. vol. 23, p. 401
17. Interest was paid on a mortgage of 360*l.* from 1829 to 1852, but the Court, in 1857, decided, that 110*l.* of the 360*l.* was not well charged on the property. Held, in taking the accounts, that the interest, thus paid for twenty-three years on the 110*l.*, ought not to be treated as payments in discharge of the capital of the remaining 250*l.* *Blandy* v. *Kimber*. (No. 2.) vol. 25, p. 537
18. *A. B.* agreed to become the purchaser of some leasehold property which was subject to mortgages. He entered into possession, and after the contract had been put an end to, he obtained a transfer of the mortgages, having all along continued in possession. Held, that although the circumstances would have justified the mortgagees in taking possession, still that *A. B.* was not entitled to stand in the same position, and he was directed to account as mortgagee in possession with annual rests from the date of the transfer to him of the mortgages. *Patch* v. *Wilde*. vol. 30, p. 99
19. Where a mortgaged estate is of an insufficient value to pay the mortgage, a mortgagee, on entering into possession, may open mines and cut timber, and he will be charged only with the net profits. But where the estate is sufficient, a mortgagee in possession has no such right, and if he opens and works mines, he will be charged with the gross receipts, and will be disallowed the expenses of working. *Millett* v. *Davey*. vol. 31, p. 470
20. Where the liability of a mortgagee in possession to account without annual rests once begins, it continues until changed by some further agreement come to between the mortgagor and mortgagee. *Scholefield* v. *Lockwood*. (No. 3.) vol. 32, p. 439
21. An intended mortgagor agreed to pay the reasonable costs of the mortgagee's solicitor, if the matter went off. Held, that this did not include the expenses of withdrawing the money from a banker's and of remitting it to *London* for payment. *Re Blakesley and Beswick*. vol. 32, p. 379
22. A mortgagee in possession of a business is accountable not only for what he has received, but for what he might or ought to have received. *Chaplin* v. *Young*. (No. 1.) vol. 33, p. 330
23. As to the rights and remedies of a mortgagee of a share in a colliery partnership. *Redmayne* v. *Foster*. vol. 35, p. 529
24. The mortgagee of a share in a colliery partnership is entitled to a decree for foreclosure, but he is not entitled to any account of the property paid or distributed to shareholders or partners before he filed his bill, nor is he entitled to contest or call the shareholders to account for their previous management of the colliery; but he is entitled to say, that no extra burden shall be thrown on his shares which is not in accordance with some contract or agreement in force at the date of the mortgage. *Ibid.*
25. A mortgagee out of possession called on the tenant for his rent, who said he had laid it out in repairs. The mortgagee acquiesced in this; but there was no evidence of the tenant's accepting the mortgagee as his landlord or of anything like an attornment. Held, that there was not an entering into possession or into the receipt of the rent by the mortgagee. *Ward* v. *Carttar*. vol. 35, p. 171

MORTGAGOR AND MORTGAGEE (COSTS).

[*See* COSTS OF ADMINISTRATION.]

1. A mortgagee of estates on which the incumbrances were numerous and of a complicated nature, filed a bill for foreclosure and redemption, and, by consent, the estate was sold. Held, that the costs of sale ought not to be paid, in the first place, out of the general fund, but that the money arising from the sale of each separately incumbered estate ought to be treated in the same manner as the estate itself would have been, and that the mortgagees ought to be paid their principal, interest, and costs, according to their respective priorities. *Wild* v. *Lockhart.* vol. 10, p. 320
2. A mortgagee filed a bill of foreclosure, and, pending the suit, transferred the mortgage to *A. B.*, who transferred it to *C. D.* Held, that the *extra* costs thus occasioned were not to be charged against the mortgagor. *Coles* v. *Forrest.* vol. 10, p. 552
3. Pending a suit, by a first mortgagee to foreclose, the Plaintiff obtained a transfer from the second mortgagee. Held, that the costs occasioned were chargeable against the estate. *Ibid.*
4. A mortgagee had been in possession. She transferred the whole of her interest, and afterwards became insolvent. Her assignees were made Defendants to a bill of foreclosure. Held, that their costs ought not to be charged on the mortgaged estate, but on the Plaintiff. *Ibid.*
5. A testator empowered his trustees to charge his estates for certain purposes, and he devised it on trusts for *A.* and *B.* The charge was raised, and became vested in *A.*, who filed a bill to raise the charge, and to ascertain the rights of the parties in the surplus. Held, that *A.*'s costs of suit had priority over those of *B.* *Howard* v. *Prince.* vol. 13, p. 72
6. Where a mortgagee, instead of simply filing a bill to enforce his securities, institutes or adopts a suit for a general administration, and the estate proves deficient, the costs of the suit are to be paid, in the first instance, out of the estate. *Armstrong* v. *Storer.* vol. 14, p. 535
7. In an administration suit, all proper and necessary parties have their costs prior to the administration of the fund. But in suits by mortgagees to ascertain priorities upon an estate, or upon a fund produced by it, after the proper costs of the Plaintiff are paid, the costs of the other incumbrancers are added to their securities, and paid in the order of their priorities. *Ford* v. *The Earl of Chesterfield.* vol. 21, p. 426
8. In a suit for redemption a mortgagee is entitled to his costs, if it be found that anything was due to him at the filing of the bill, although the accounts be directed to be taken against him with annual rests. *Barlow* v. *Gains.* vol. 23, p. 244
9. Where on a bill for redemption nothing is found due to the mortgagee, he must pay the costs of the suit. *Ibid.*
10. A mortgagor obtained a decree for redemption, but did not prosecute it, and died. The mortgagee then instituted a second suit against the representative of the mortgagor for foreclosure, and a similar decree was made. It was found, that a balance was due to the mortgagee at the institution of the first suit, but none at the second. The mortgagee obtained his costs of the first suit, but was ordered to pay those of the second. *Ibid.*

MORTMAIN.

[*See* CHARITABLE BEQUEST, CHARITY.]

1. A testator gave his real and personal estate to trustees, upon trust with all convenient speed to convert into money; and he directed them, at the end of twelve months after his decease, to invest the sum of 600*l.* out of his *personal estate*, in trust for a charity; he also directed them, at the end of twelve months after his decease (*all his property being personal*), to lay out the residue for other charities. The realty was sold. Held, that the 600*l.* was not payable out of pure personalty, but out of the mixed fund: and that this gift and the gift of the residue were rendered void by the Mortmain Act, in the proportion which the realty bore to the personalty. Held also, that the realty was not converted to all intents, so as to entitle the next of kin to the fund released, in consequence of the invalidity of the real estate to charity. *Johnson* v. *Woods.* vol. 2, p. 409
2. The Court will not marshal assets for the purpose of giving effect to charity legacies. *The Philanthropic Society* v. *Kemp.* vol. 4, p. 581
3. A testatrix bequeathed legacies to charities and to individuals, and she directed her charity legacies to be paid "out of her ready money, and the proceeds of the sale of her funded property, personal chattels and effects, and not from the proceeds or by sale of her leasehold or real estates;" and she charged her leasehold estates, in addition, with the payment of her debts, funeral and testamentary expenses, and legacies not given to charities. The pure personalty was insufficient to pay the debts, &c., and all the legacies. Held, that the charity

legacies failed in the proportion of the mixed personalty to the pure personalty. *The Philanthropic Society* v. *Kemp.* vol. 4, p. 581

4. Policies of assurance by which the directors engage "to pay out of the funds," or "that the funds shall be liable," or "that a share of the funds shall be paid," are not so connected with land, as, under the Mortmain Act, to render invalid a gift of them to charity, although the assets of the assurance companies consist partly of real estate. *March* v. *The Attorney-General.* vol. 5, p. 433

5. The rule is the same, although by the policy, sealed with the corporate seal of the company, the assured becomes a member. *Ibid.*

6. Bequest of chattels real to trustees to erect such monument as they should think fit, and build an organ gallery. The first object was valid, the second invalid under the Statute of Mortmain. Held, that the trustees were wrong in applying the whole to the first object, and an inquiry was directed to apportion the gift. *Adnam* v. *Cole.* vol. 6, p. 353

7. A simple declaration that charity legacies are to be paid out of pure personalty will not give to such legacies a priority upon the pure personalty over other legacies and charges; nor exempt any part of the estate, from the ordinary rules of applying and distributing the assets. *Sturge* v. *Dimsdale.* vol. 6, p. 462

8. A testatrix created a mixed fund of realty and personalty for payment of her debts and legacies, but she directed the charity legacies to be paid out of pure personalty. She afterwards directed her trustees to set apart a sum of stock sufficient to provide for a number of annuities, and as the annuitants died, the stock let loose was to be applied in payment of the charity legacies. *Semble*, that the direction alone was not of itself sufficient to exempt the charity legacies from being payable out of the realty, in the proportion of the realty to the personalty, but held that the second part created a demonstrative fund of pure personalty, out of which the charity legacies were to be paid, *Ibid.*

9. Personalty directed to be laid out in land, to be held in trust for *A.* for life, with a gift over, upon a breach of a condition, to a charity. Held, that the charity could not take. *Ridgway* v. *Woodhouse.* vol. 7, p. 437

10. Shares in gas light and in a dock company, which possessed real estate for the purposes of their undertaking. Held, not within the Statute of Mortmain. *Sparling* v. *Parker.* vol. 9, p. 450

11. Canal shares, which, by act of parliament, were declared to be personal estate, and transmissible as such. Held, by Sir *John Leach*, to be within the Mortmain Act. *Tomlinson* v. *Tomlinson.* vol. 9, p. 459

12. Bequest of 2,000*l* to trustees, to apply 800*l*. in building six almshouses, and to pay the income of the residue to the six almsmen therein residing. Held, that the whole was void. *Smith* v. *Oliver.* vol. 11, p. 481

13. Dock and canal shares, and bonds secured by an assignment of the rates. Held, not an "interest" in land, within the Statute of Mortmain. *Walker* v. *Milne.* vol. 11, p. 507

14. A charitable bequest to lay out money in the erection of buildings, without more, pre-supposes that a portion of the bequest must be applied in the purchase of land for that purpose; and is void under the Statute of Mortmain. *Trye* v. *The Corporaton of Gloucester.* vol. 14, p. 173

15. A bequest to lay out money in the erection or repair of buildings upon lands already in mortmain is a valid and effectual bequest. *Ibid.*

16. The rule is, as stated in *The Attorney-General* v. *Davies* (9 *Ves.* 544), "that, unless the testator distinctly points to some land already in mortmain, the Court will understand him to mean that an interest in land is to be purchased, and the gift is not good." *Ibid.*

17. Bequest of money which, in the event of land being given for the purpose to the corporation of *Gloucester*, was to be laid out upon it for a charity, with a gift over, if no land were "granted and conveyed for that purpose within" ten years after the testator's decease. Land was conveyed a few days before the expiration of the ten years, but the deed was not enrolled until five days after the expiration. Held, first, that, although the enrolment and the twelve months (during which it was necessary the grantor should survive to give the grant validity) both took place after the ten years; still that the grant must be considered valid as from its date. Held, secondly, that whether the grantor could afterwards defeat the voluntary grant or not by a conveyance to a purchaser for valuable consideration, did not affect the question. *Ibid.*

18. A bequest of money to be expended in the erection or repair of buildings is void, unless the testator expressly states in his will his intention that the money is to be expended on some land already in mortmain. *Ibid.*

19. Real estate in *New South Wales* is not within the Statute of Mortmain. *Whicker* v. *Hume.* vol. 14, p. 509

20. Gift of stock "for the establishment of a charity school," held void. *Re Clancy.* vol. 16, p. 295

21. A bequest of stock, to be applied "for

the benefit and ornament" of the town of *F.*, is not void under the Statute of Mortmain. *The Mayor, &c. of Faversham* v. *Ryder.* vol. 18, p. 318

22. *Tothill Fields* Improvement Bonds held not within the Statute of Mortmain. *Bunting* v. *Marriott.* vol. 19, p. 163

23. Whether a covenant to pay to trustees a sum of money, in trust for a charity, is valid, or void as a device to defeat the Statute of Mortmain, where it must be satisfied out of chattels real, *quære.* *Alexander* v. *Brame.* vol. 19, p. 436

24. The Court directed the parties to try its validity by an action at law. *Ibid.*

25. After the passing of the Mortmain Act (1736) lands were devised to trustees for a charity. The rents were so applied by the trustees and their heirs down to the present time. On an information against the heir to correct abuses, he set up the invalidity of the devise, but the Court held, that the *onus* of proving no other mode had been adopted to make the charity valid was on him, and that every presumption would be made in support of its validity. *Attorney-General* v. *Moor.* vol. 20, p. 119

26. The shares of an incorporated company, where the substance of the undertaking is a dealing with land, are within the Statute of Mortmain, unless specially exempted. *Ware* v. *Cumberlege.* vol. 20, p. 503

27. Bequest of shares in the *Grand Junction Waterworks Company* to a charity, held invalid. *Attorney-General* v. *Moor.* vol. 20, p. 503

28. A testator demised eight acres at *N.* to *B.*, and he directed, that if any person should, within twelve months from his death, give a suitable piece of land in *N.*, as the site of almshouses, his executors should pay to the trustees 60,000*l.*, to be devoted to the purposes of the charity. *B.*, who was an executor, devoted the eight acres to the charity. Held, that the bequest of the money was void, as contrary to the policy of the Mortmain Act. *Philpott* v. *St. George's Hospital.* vol. 21, p. 134

29. A testator, in case any person should give a suitable piece of land for almshouses, gave a sum of money to be devoted to the charity, with a gift over of the fund if no such piece of land should be provided or the scheme should not be approved of by his trustees. The land was provided, and no difficulty interposed as to the scheme, but the gift of the money was held void as contrary to the policy of the Mortmain Act. Held, that the gift over did not take effect. *Ibid.*

30. A testator gave 8,000*l.* to his trustees, upon trust, in case at his death, or within twenty-one years thereafter, his object could be legally carried into effect, by an act passed or to be passed, to apply it for providing a site for erecting a church at *B.*, in the parish of *W.*, with proper schools attached, and for the endowment of the church. Though a separate district had not yet been created under the 6 & 7 *Vict.* c. 37, it was held, that the bequest was not void under the Mortmain Act, and that the Ecclesiastical Commissioners would become entitled to the legacy, if, within the stated period, such a district should be constituted under the provisions of the statute. *Baldwin* v. *Baldwin.* (No. 2.) vol. 22, p. 419

31. Bequest of money to a society established for assisting the owners of impropriate tithes, by money payments, to restore them to spiritual purposes, is void under the Statute of Mortmain, and is not rendered valid by the 13 & 14 *Vict.* c. 94, s. 23. *Denton* v. *Lord John Manners.* vol. 25, p. 38

32. A bequest to "establish a school for educating the poor children" of a parish is not void under the Statute of Mortmain. *Hartshorne* v. *Nicholson.* vol. 26, p. 58

33. Bequest to a charity of shares in the *Rhymney Iron Company*, which manufactured iron obtained from its own estates. Held, void under the Statute of Mortmain. *Morris* v. *Glynn.* vol. 27, p. 218

34. The question whether the shares in a company can be bequeathed to a charity depends on whether the substantial object of the company is or is not a dealing with land, and whether the land held by it is or is not merely ancillary to a trading independent of land. *Ibid.*

35. *A.*, in consideration of 800*l.* paid by *B.*, granted a rent-charge to trustees, in trust to pay it to the vicar of *C.*, in lieu of his small tithes; but if, at any time, the vicar should insist on taking the tithes, then in trust for the poor. The deed was duly inrolled. An objection, that the deed was invalid as a purchase from the vicar, and void as not being made to take effect in possession, as regarded the charitable foundation in favour of the poor, was overruled. *Milbank* v. *Lambert.* vol. 28, p. 206

36. Bequest to a charity of a sum of money charged on the tolls of a harbour, held void under the Statute of Mortmain *Ion* v. *Ashton.* vol. 28, p. 379

37. Where lands are already in mortmain under a conveyance duly inrolled, no subsequent deed, conveying such lands to another charity, requires inrolment under the 9 *Geo.* 2, c. 36, s. 2. *Ashton* v. *Jones.* vol. 28, p. 460

38. *A.* devised a leasehold to his widow for life, and after her death, to trustees to sell and divide the produce amongst *B.*

and others. *B.* died in the lifetime of the widow; having bequeathed his residue to charities. Whether the bequest of *B.*'s interest in the leasehold was void under the Statute of Mortmain, *quære*. But the certificate having found it to be pure personalty: Held, that it was too late, in the absence of a motion to vary the certificate, to raise the objection. *Aspinall* v. *Bourne*. vol. 29, p. 462

39. Arrears of interest on a mortgage of real estate are within the Statute of Mortmain and cannot be bequeathed to a charity. *Alexander* v. *Brame*. (No. 2.) vol. 30, p. 153

40. Debts due on bond, accompanied with a deposit of title-deeds of real estate, and an agreement to execute a legal mortgage when required, are within the Statute of Mortmain. *Ibid.*

41. Debentures of the commissioners of a dock made under an Act of Parliament, and in the form of an assignment of "the duties arising by virtue of the act." Held, within the Mortmain Act. *Ibid.*

42. Charitable bequest of 6,000*l.*, to be applied in "establishing, endowing, maintaining or supporting almshouses" to be situate at *S.*, followed by a direction that the trustees should have regard to the application thereof being consistent with the laws in force. Held, not obnoxious to the provisions of the Statute of Mortmain, and therefore valid. *Dent* v. *Allcroft*. vol. 30, p. 335

43. Charitable bequest of 2,000*l.*, for "establishing, endowing, maintaining, continuing and keeping up" a school at *S.* "or otherwise for school purposes." Held, valid by reason of the alternative, authorizing its application "for school purposes." *Ibid.*

44. A testator directed his trustees to invest his personal estate upon "real securities," with full power "to change the securities or funds," and he bequeathed a part to charity. Held, that the discretion as to the mode of investment rendered the charitable gift valid. *Graham* v. *Paternoster*. vol. 31, p. 30

45. Trustees had a discretionary power of investing a residue either on government or "real securities," and to alter or vary the investment. *A. B.*, who, subject to a prior life estate, was absolutely entitled, gave the fund to charity, both by deed not inrolled and by her will, and she died in the life of the tenant for life. The fund had always been invested in the public funds. Held, that, notwithstanding the Mortmain Act, the gift to the charities was valid. *Re Beaumont's Trusts*. vol. 32, p. 191

46. A bequest of a legacy for the enlargement of a parish church is not void under the Statute of Mortmain. *Re Hawkin's Trusts*. vol. 33, p. 570

47. A man granted to his sister a lease of lands at a peppercorn rent for twenty years, determinable at their deaths. Three months afterwards he granted the hereditaments to charitable uses, subject to the lease. Held, that this gift to charity was an evasion of the Statute of Mortmain and void. *Wickham* v. *The Marquess of Bath*. vol. 35, p. 59

48. A testator directed his executors to apply 600*l.* in getting an act of parliament to confirm an invalid disposition made by him of real estate to a charity. Held, that this imposed no duty or obligation on the executors. *Ibid.*

49. A grant of land to charitable uses was attested by one witness only, but two other persons who executed the deed were present. Held, that this was not a sufficient compliance with the requirements of the Statute of Mortmain. *Ibid.*

MOTION.

[*See* ABANDONED MOTION, DISMISSAL, MOTION (COSTS OF), MOTION FOR DECREE, PAYMENT INTO COURT, PAYMENT OUT OF COURT, STAYING PROCEEDINGS.]

1. Notice of motion was given for the payment of money into court, but the notice did not proceed to state that an application would be made for its investment; one of the parties did not appear on the motion. Held, that no order for investment of the fund could be made. *Robinson* v. *Wood*. vol. 1, p. 206

2. The proper mode of obtaining money out of court is by petition: but the rights of the parties having been ascertained by arbitration, and no decree having been made, the Court in this case ordered payment of money out of Court upon motion. *Oliver* v. *Burt*. vol. 1, p. 583

3. Where a Defendant admits by his answer the possession of documents, and a balance of money, it is irregular to move for the production of the former, and payment into Court of the latter, by two separate motions. They ought to be included in one. In this case the Court ordered the Plaintiff to pay the extra costs occasioned by this irregular proceeding. *Hawke* v. *Kemp*. vol. 3, p. 288

4. Notice of motion given *on behalf of a relator* in an information, held irregular; it should be on behalf of the Attorney-General. *The Attorney-General* v. *Wright*. vol. 3, p. 447

5. On a motion to discharge an alleged irregular order, no parties can be heard in support of the application but those who have joined in the notice of motion to discharge it. *Stubbs* v. *Sargon*. vol. 3, p. 408

6. Motion by purchaser under the Court, for a reference to inquire whether it would benefit the parties that the contract should be rescinded, on the ground that the executor had stated he was unable to comply with the conditions. Held, irregular. *Stubbs* v. *Sargon.* vol. 4, p. 90

7. A party obtained an order on motion, the other side not appearing, but the service of the notice of motion, though regular, was supported by an imperfect affidavit. Held, that he could not subsequently verify the service, and that a new notice of motion must be given. *Barton* v. *Chambers.* vol. 4, p. 547

8. A motion being made for an injunction, it stood over with liberty to the Plaintiff to bring an action to establish his right. The Plaintiff neglecting to proceed therein, the motion was refused with costs. *Perry* v. *Truefitt.* vol. 6, p. 418

9. A Plaintiff cannot before appearance serve a notice of motion on the Defendant, without first obtaining the special leave of the Court, and the notice of motion should state that such leave has been given. *Jacklin* v. *Wilkins.* vol. 6, p. 607

10. A motion for an injunction to restrain a contingent nuisance was refused. Held, by the Lord Chancellor, that the motion ought to be refused with costs, and not stand over. *Haines* v. *Taylor.* vol. 10, p. 75

11. An order absolute to confirm the Master's report of best purchaser ought to be obtained on a seal day. *Robertson* v. *Skelton.* vol. 10, p. 197

12. One notice of motion to confirm the Master's report of best purchaser, and to pay the purchase-money into Court, is irregular. *Duffield* v. *Elwes.* vol. 13, p. 85

13. Decree made on motion allowed to be varied on motion and without petition of appeal. *Hughes* v. *Jones.* vol. 26, p. 24

MOTION (APPEARANCE).

After considerable delay in the prosecution of a suit, the solicitor of a deceased party was served with a notice of motion. Held, that his duty to the Court rendered it proper for him to appear on the motion. *Chalie* v. *Gwynne.* vol. 9, p. 319

MOTION (COSTS).

1. Where a notice of motion embraces two objects, and the principal one fails, the party moving must pay the costs of the motion. *Sturch* v. *Young.* vol. 5, p. 557

2. Where the right of a party to an order for which he has given notice of motion is intercepted by a step taken by his adversary, he is entitled to his costs; but he should not bring on the motion, if the costs then incurred are tendered. *Newton* v. *Ricketts.* vol. 11, p. 164

3. A motion being refused with costs, the party cannot afterwards renew the motion till the costs have been paid. *Oldfield* v. *Cobbett.* vol. 12, p. 91

4. Costs given, though not asked by the notice of motion. *Butler* v. *Gardener.* vol. 12, p. 525

5. Where a notice of motion does not ask for costs, it is irregular, where the Respondent does not appear, to take an order for costs upon an affidavit for service. *Pratt* v. *Walker.* vol. 19, p. 261

6. Where the Defendant to a bill of discovery in aid of proceedings at law raises an unsuccessful opposition to a motion for an injunction to stay proceedings at law, he will be ordered to pay the costs of the motion, though he gets the general costs of the suit. *Lovell* v. *Galloway.* vol. 19, p. 643

7. Parties, though not formally served with a notice of motion, yet substantially made Respondents, held entitled to their costs. *Shaw* v. *Forrest.* vol. 20, p. 249

8. A second motion for the same object, which had previously failed with costs, cannot be made until those costs have either been paid or been secured by a payment into Court. *Burdell* v. *Hay.* vol. 33, p. 189

MOTION FOR DECREE.

Where a motion for an injunction is, by arrangement, turned into a motion for a decree, it must be set down by order to save the month's delay. *Green* v. *Low.* (No. 1.) vol. 22, p. 395

MULTIFARIOUSNESS.

1. A bill to restrain commissioners from paving one part of the Plaintiff's property and draining another is not multifarious. *Birley* v. *The Constables, &c. of Charlton.* vol. 3, p. 499

2. The Plaintiffs appointed *A.*, *B.* and *C.* their foreign agents. *A.* retired, and the Plaintiffs then appointed *B.*, *C.* and *D.* agents. The transactions being separate. Held, that a bill for an account of the two agencies was multifarious as regarded *A.*; but *semble*, if the dealings had not been separate, but a mere continuation, the decision would have been otherwise. *Benson* v. *Hadfield.* vol. 5, p. 546

3. There were two railway companies, *A.* and *B.* A shareholder in *A.* filed his bill on behalf, &c. against the companies *A.* and B. and the directors of the two companies, complaining, first, that the directors of *A.* had illegally invested the funds in shares in *B.*; and, secondly, of a separate transaction, whereby the capital of *A.* had been advanced to *B.* upon an

arrangement not authorized, and praying for relief against the several directors. Held, that the bill was multifarious. *Salomons* v. *Laing.* vol. 12, p. 339

4. Demurrer for multifariousness overruled. *Rump* v. *Greenhill.* vol. 20, p. 512
5. Where a demurrer for multifariousness is on the record the defendant may demur *ore tenus* for want of equity. *Ibid.*
6. A bill to protect a testator's estate until a legal personal repesentative has been appointed, and also to administer the estate, is multifarious. It should be limited to the first object. *Overington* v. *Ward.* vol. 34, p. 175
7. The Plaintiff was entitled to an estate, subject to a mortgage created by his ancestor. He instituted a suit against the mortgagee and the representatives of his ancestor, praying to have the mortgage paid out of his assets or by a sale of the estate, and also for the delivery up of independent securities given by the Plaintiff to the Defendant. Held, that the suit was multifarious, and a demurrer to it was allowed. *Hughes* v. *Cook.* vol. 34, p. 407
8. A bill by one of the next of kin to administer the estate and to set aside a conveyance by him of part of it, is multifarious. *Bouck* v. *Bouck.* vol. 35, p. 643

MUNICIPAL CORPORATION ACT.

[*See* CORPORATION.]

Whether a judgment against a municipal corporation operates as an equitable mortgage on its lands, the Municipal Corporation Act forbidding a mortgage, except with the assent of the lords of the treasury, *quære*. *The Mayor, &c. of Brecon* v. *Seymour.* vol. 26, p. 548

NEPHEWS.

[*See* GIFT TO A CLASS.]

A married man bequeathed his residue to his niece and all his other nephews and nieces on both sides. Held, that the nephews and nieces of his wife participated in the bequest. *Frogley* v. *Phillips.* vol. 30, p. 168

NEW CONTRACT.

[*See* NOVATION OF CONTRACT.]

NEW TRUSTEE.

[*See* TRUSTEE, TRUSTEE ACT.]

1. The executor of the survivor of three trustees declined to prove his will. Held, that the case was within the 1 *Will.* c. 60. *Ex parte Hagger in re Merry's Trust.* vol. 1, p. 98
2. A mortgagee was resident out of the jurisdiction. Held, that the case was not within the 1 *Will.* 4, c. 60, the 4 & 5 *Will.* 4, c. 23, or the 1 & 2 *Vict.* c. 69. *Green* v. *Holden.* vol. 1, p. 207
3. Pending an information filed for the purpose of having new trustees of a charity appointed in the place of some who were dead, the surviving trustees took upon themselves, without the sanction of the Court, to appoint new trustees. Held, that though this was neither a contempt nor an act altogether void, yet it imposed upon the trustees the necessity of proving, by the strictest evidence, and at their own expense, that what had been done was perfectly right and proper; and the case not appearing altogether clear, the appointment was set aside, and the trustees were ordered personally to pay all the extra costs occasioned by their act. *Attorney-General* v. *Clack.* vol. 1, p. 467
4. The bankruptcy of a trustee is a sufficient ground for his removal from that office, although he has obtained his certificate, and the trust property is in the hands of a receiver. *Bainbrigge* v. *Blair.* vol. 1, p. 495
5. A petition under 1 *Will.* 4, c. 60, to obtain a transfer of trust stock from the names of the surviving trustees into the joint names of such trustees and of a new trustee duly appointed, is properly presented by such new trustee. *In re Law.* vol. 4, p. 509
6. Trustees appointed by the Court in the place of others whose appointments had failed by their deaths in the lifetime of the testator, authorized to appoint future trustees in the manner and under the circumstances mentioned in the will. *White* v. *White.* vol. 5, p. 221
7. The executor of a surviving trustee declined stating whether he would or not prove the will, and neglected for thirty-one days after notice to transfer trust stock standing in the name of his testator. Held, that he was a trustee within the 1 *Will.* 4, c. 60, and a transfer was ordered to new trustees. *Cockell* v. *Pugh.* vol. 6, p. 293
8. Power was given to trustees and their successors to appoint new trustees. The Court being called on to appoint new trustees, declined to enable such new trustees to appoint successors. *Holder* v. *Durbin.* vol. 11, p. 594
9. The practice in the case of *White* v. *White* (5 *Beavan*, 221) will not now be followed. *Ibid.*
10. The right of selecting new trustees of a parish charity held to belong to the ratepayers in vestry, and not to the surviving trustees. *Attorney-General* v. *Dalton.* vol. 13, p. 141
11. In 1830 *A.* and *B.* were appointed trustees of a part of a sum vested in other

trustees. The deed contained a power for the settlors to appoint new trustees, in case any trustee should wish to be discharged from, or should decline to act in, the trusts. *B.* did not execute. In 1848 *B.*, alleging he had never acted, disclaimed, and *A.* retired, and thereupon two new trustees were appointed, and the fund assigned to them by *A.* only. Held, that whether *B.* had acted or not, the new trustees had been duly appointed. *Noble* v. *Meymott.* vol. 14, p. 471

12. In 1830 *A.* and *B.* were appointed trustees of a part of a sum vested in other trustees. The deed contained a power for the settlors to appoint new trustees, in case any trustee should wish to be discharged from, or should decline to act in, the trusts. *B.* did not execute. In 1848 *B.*, alleging he had never acted, disclaimed, and *A.* retired, and thereupon two new trustees were appointed, and the fund assigned to them by *A.* only. Held, that whether *B.* had acted or not, the new trustees had been duly appointed, and that the *cestuis que trusts* were not necessary parties to a suit by such new trustees against the persons who held the fund, to compel payment to the new trustees. *Ibid.*

13. In appointing new trustees, the Court is not limited to the number originally nominated. *Plenty* v. *West.* vol. 16, p. 356

14. The appointment of a new trustee under a power pending a suit for administration, is not necessarily invalid. *Graham* v. *Graham.* vol. 16, p. 550

15. Two retiring trustees held not authorized to appoint two new trustees, under a power given to surviving or continuing trustees. *Stones* v. *Rowton.* vol. 17, p. 308

16. Two trustees were originally appointed by a settlement, which contained a power that if the trustees or either of them should be desirous of being discharged, the tenant for life, "and after his decease the surviving or continuing trustees or trustee" might appoint any other person or persons to be a trustee or trustees, in the stead of the trustee or trustees so desiring to be discharged. Held, that they did not authorize the two original trustees, after the death of the tenant for life, to retire together and appoint two new trustees in their stead. *Ibid.*

17. A plaintiff having filed a bill for the appointment of new trustees, in a case in which it might be done by petition, was ordered to pay all the costs. *Thomas* v. *Walker.* vol. 18, p. 521

18. Marriage articles authorized the tenant for life to withdraw the fund from the settlement, with the assent of "the undersigned trustees." Held, that the power of assent was annexed to the office, and might therefore be exercised by new trustees appointed by the Court. *Byam* v. *Byam.* vol. 19, p. 58

19. A power "for the surviving or continuing or other trustees" to appoint new trustees, in the place of a trustee or trustees dying or desiring to be discharged or refusing or declining to act. Held, to authorize the appointment, by the survivor of four trustees, who was desirous of being discharged, of four new trustees. *Lord Camoys* v. *Best.* vol. 19, p. 414

20. The Master of the Rolls, except in cases of absolute necessity, will not appoint a near relative of the parties interested to be a trustee. *Wilding* v. *Bolder.* vol. 21, p. 222

21. Trustees of a charity were disqualified on "departing the United Kingdom, from whatever cause or motive, or under whatever circumstances." Held, that a temporary absence abroad was not within the proviso. *In re The Moravian Society.* vol. 26, p. 101

22. Trustees had a power of sale over a real estate vested in them, and to give good discharges for the purchase-money. The tenant for life had a power to appoint new trustees, and "thereupon" the trust estate was to be conveyed to the old and new trustees. In 1857 *A. B.* was appointed a new trustee, but before any conveyance had been made to him, the estate was sold and conveyed to a purchaser, and the purchase-money was paid to the old and new trustees. Held, that the purchaser had obtained a good discharge for the purchase-money. *Welstead* v. *Colvile.* vol. 28, p. 537

23. A trustee took the benefit of the Insolvent Act. Held, that this was a good ground for his removal. *Harris* v. *Harris.* (No. 1.) vol. 29, p. 107

24. In 1821 a chapel was vested in trustees in trust for Particular Baptists. In 1848 a dissension took place, and part of the congregation seceded and went to another chapel. In 1860 the surviving trustees were induced, not knowing the real object, to appoint new trustees and vest the property in them. Immediately after, the new trustees, who were attached to the seceding congregation, brought an action to obtain possession of the chapel. The appointment was set aside, and the action restrained with costs, and new trustees were ordered to be appointed in Chambers. *Newsome* v. *Flowers.* vol. 30, p. 461

25. The Court, after consideration, appointed a *feme sole* to be a trustee. *In re Campbell's Trust.* vol. 31, p. 176

26. A tenant for life, with power to appoint new trustees, parted with the whole of his interest in the settled property. He afterwards appointed two improper persons to be trustees. Upon a bill to

remove such trustees, and also to administer the trusts and to make the tenant for life pay the costs: Held, on demurrer by the tenant for life, that he had properly been made a party. *Raikes* v. *Raikes*. vol. 32, p. 403

27. Application for the appointment of a new trustee in the place of a tenant for life, with power to appoint new trustees, who had been found lunatic refused, until a committee had been appointed and had been served with the petition. *Re Parker's Trusts*. vol. 32, p. 580

28. A testator appointed *A. B.* (the tenant for life) and *C. D.* trustees. The will contained no power to appoint new trustees. *C. D.* having disclaimed, *A. B.* (under the powers of the 23 & 24 *Vict.* c. 145, s. 27) appointed a single trustee in his place:—Held, that the other *cestuis que trusts* were entitled to have a third trustee appointed, and that the statute did not take away the jurisdiction of the Court to increase the original number of trustees. *The Viscountess D'Adhemar* v. *Bertrand*. vol. 35, p. 19

29. Under a power to the survivor to appoint new trustees, the Court held, upon the terms of the power, that surviving trustees, appointed by the Court and not under the power, had no authority to exercise it. *Cooper* v. *Macdonald*. vol. 35, p. 504

NEXT FRIEND.

[*See* FORMA PAUPERIS, GUARDIAN AD LITEM, INFANT, MARRIED WOMAN, SECURITY FOR COSTS.]

1. The Master reported that a suit instituted on behalf of infants was improperly instituted and ought not to be prosecuted. It was dismissed, with costs to be paid by the next friend. *Fox* v. *Swezerkropp*. vol. 1, p. 583

2. In a clear case, the Court, being of opinion that a suit had been commenced by the next friend of infants to promote his own views, and not for the benefit of the infants, summarily, and without a reference to the Master, dismissed it with costs, to be paid by the next friend. *Sale* v. *Sale*. vol. 1, p. 586

3. On a motion to substitute a new next friend of an infant Plaintiff, the Court must be satisfied by affidavit of the circumstances and respectability of the party proposed to be substituted, although all the other parties to the cause consent to the substitution. *Harrison* v. *Harrison*. vol. 5, p. 130

4. Two suits were instituted on behalf of infants, but it was found that it was most for their benefit to prosecute the second. The first suit was properly instituted; but there being some impropriety of conduct on the part of the solicitor, who instituted it on his own authority, and nominated his brother as next friend, the first bill was, upon an interlocutory application, dismissed without costs. *Starten* v. *Bartholomew*. vol. 6, p. 143

5. The name of a person who had been made the next friend of an infant Plaintiff without his authority, ordered to be struck out, but liberty was given to the co-Plaintiffs to amend by naming a new next friend. *Ward* v. *Ward*. vol. 6, p. 251

6. As to the liability of the next friend in such a case as regards the Defendant. *Ibid.*

7. The Court does not require that the next friend of a *feme covert* Plaintiff shall be a person of sufficient substance to answer the costs. *Dowden* v. *Hook*. vol. 8, p. 399

8. Difficulties in dealing with suits filed by strangers on behalf of infants. On the one hand, you may encourage useless and expensive litigation, on the other, you may discourage interference very often necessary for their protection. *Cross* v. *Cross*. vol. 8, p. 455

9. A suit was instituted in the name of two infants by their next friend. One came of age, and some time afterwards, the next friend obtained an order for changing the solicitors of the Plaintiffs. It was discharged with costs. *Brown* v. *Brown*. vol. 11, p. 562

10. A Defendant cannot act as next friend of a Plaintiff *feme covert*. *Payne* v. *Little*. vol. 13, p. 114

11. Petition by a *feme covert* in a suit, not naming a next friend, directed to be amended by inserting a next friend. *Howard* v. *Prince*. vol. 14, p. 28

12. The next friend of a married woman having become insolvent, the proceedings were stayed. *D'Oechsner* v. *Scott*. vol. 24, p. 239

NEXT OF KIN.

[*See* HEIR, PERIOD OF ASCERTAINMENT.]

1. By the settlement made on the marriage of *E. M.*, the ultimate limitation of personal property was, "to such person or persons as at the time of the death of *E. M.* should be her next of kin." *E. M.* died leaving a father, mother, and a child. Held, that, under this limitation, the father, mother, and child took as her next of kin in joint tenancy. *Withy* v. *Mangles*. vol. 4, p. 358

2. In a marriage settlement, the ultimate limitation of a fund was to such persons "as would, at the decease of the husband, be entitled to his personal estate, as his next of kin, according to the statute for

the distribution of personal estate of persons dying intestate, if the husband had died intestate without having been married to *A.*," his wife. The wife died, and the husband married again and died. Held, that his widow took nothing under this limitation. *Cholmondeley* v. *Lord Ashburton.* vol. 6, p. 86

3. Upon an ultimate limitation to a testator's next of kin, Held, that the next of kin at the testator's death, and not those at the time when such ultimate limitation took effect, were entitled.
Allen v. *Thorp.* vol. 7, p. 72
(*Seifferth* v. *Badham.* vol. 9, p. 370
Starr v. *Newberry.* vol. 23, p. 436)

4. Where, after specific limitations, a testator gives his property to his next of kin, much weight is not to be attached to that, which is supposed to be the testator's intention in favour of or against particular persons as his next of kin; for infinite variations may take place in that class between his will and his death. It is probable, that a testator, in such cases, means to provide for particular persons, and then adds that, if they fail, then the law may take its course. *Seifferth* v. *Badham.* vol. 9, p. 370

5. A testator gave his residuary estate to his daughter for life with remainder to her children, and in default to his next of kin. Held, that the class of next of kin was to be ascertained at the testator's death. *Lasbury* v. *Newport.* vol. 9, p. 376

6. In a marriage settlement the ultimate limitation of a fund provided by the husband was, "for his next of kin or personal representatives in a due course of administration, according to the Statute of Distributions." There was a similar limitation *mutatis mutandis* of the fund provided by the wife. The Court, rejecting the claims of the husband's executors and of his residuary legatee, and excluding his widow, held, that the next of kin were entitled to the fund provided by the husband. *Kilner* v. *Leech.* vol. 10, p. 362

7. A testatrix having three daughters, gave one-third to each for life, with remainder to their children respectively, with cross-remainders between them, with an ultimate limitation to her own "next of kin and legal personal representatives." Held, that the class of next of kin was to be ascertained at the death of the testatrix, and that they took as joint tenants. *Baker* v. *Gibson.* vol. 12, p. 101

8. Bequest to *A. B.* for life, and afterwards to her children; but, in default of children, "to pay or assign and transfer" to *C. D.* if living, but if dead, to his next of kin *ex parte maternâ*. *C. D.* died before *A. B.* Held, first, that the next of kin were to be ascertained at the death of *C. D.* and not of *A. B.*; and secondly, that the next of kin *ex parte maternâ* were not excluded, because they also filled the character of next of kin *ex parte paternâ*. *Gundry* v. *Pinniger.* vol. 14, p. 94

9. A testator bequeathed the residue to his wife for life, with remainder to his children living at his death, and if there should be none (which happened), then he directed, that immediately after his wife's decease, it should "become the property of the person who should *then* become entitled to take out administration to his effects, as his personal representative," according to the Statute of Distributions, and in the proportions thereby pointed out, in case he had died intestate and unmarried. Held, that the next of kin at the death of the testator, and not those at the death of the tenant for life, were entitled. *Cable* v. *Cable.* vol. 16, p. 507

10. Trust funds were settled upon a husband for life, and if the wife should die in the lifetime of the husband, then, after his decease and failure of issue, "for such persons (other than the husband) as should *then* be the next of kin of the wife, and would have been entitled thereto under the Statute of Distributions, in case she had died sole, unmarried and intestate." Held, that her next of kin, at her own death, and not those at the death of her husband, were entitled. *Wheeler* v. *Addams.* vol. 17, p. 417

11. Bequest to *A.* for life, with remainder to *B.* for life, and after their death, to the testator's next of kin, but should no claimant appear within twelve months after their death, then to charities. *A.* and *B.* were sole next of kin at the testator's death. Held, first, that the next of kin were to be ascertained at the testator's death; and secondly, that *A.* and *B.* were not excluded from taking under the ultimate gift to the next of kin. *Gorbell* v. *Davison; Gorbell* v. *Forrest.* vol. 18, p. 655

12. *A.* bequeathed a leasehold for the benefit of *B.*, and gave her a power to appoint it by will, and, in default, to *A.*'s "nearest of kindred, precisely in the same manner directed by the statute made for the distribution of intestates' effects." On *B.*'s death without appointment, held, that the next of kin of *A.* at her own death, and not those at the death of *B.* were entitled. *Markham* v. *Ivatt.* vol. 20, p. 579

13. The term "nearest of kindred," with reference to the Statute of Distributions, has the same meaning as "next of kin." *Ibid.*

14. By a marriage settlement, the ultimate trust of some money, after failure of issue, and in default of appointment by the wife, was to such persons as would have been entitled to the personal estate

of the wife under the statute "in case she had died unmarried and intestate." Held, that "unmarried," must be construed as meaning, "not under coverture at the time of her death." *Pratt* v. *Mathew*. vol. 22, p. 328

15. Bequest to *A.* for life, and afterwards to his children, and in default, "then" unto the persons "of the blood or next of kin of the testator as would, by virtue of the Statute of Distributions, have become and been *then* entitled thereto, in case the testator had died intestate." *A.* died without issue. Held, that the class comprising the ultimate gift was to be ascertained on the death of the testator, and not of *A.*, and that the class took as tenants in common, notwithstanding the exclusion of the testator's widow. *Downes* v. *Bullock*. vol. 25, p. 54

16. Bequest to "descendants" of *A.*, "in such proportions as each may be entitled" under the Statute of Distributions. Held, that a child of *A.* took in exclusion of grandchildren. *Smith* v. *Pepper*. vol. 27, p. 86

17. A testator gave his residuary real and personal estate to his widow during widowhood, and then on trusts for the child of which his wife was *enceinte* when he should attain twenty-one, with maintenance in the meanwhile. But if such child died under twenty-one without lawful issue then living, then on these trusts:—"in trust for such person or persons as shall be my next of kin according to the Statute of Distributions." The child who, at his father's death, was his sole next of kin, died six months after his father. Held, that the next of kin must be ascertained at the death of the testator, and not (as was suggested) at the death of the son or of the widow. *Harrison* v. *Harrison*. vol. 28, p. 21

18. A limitation to the next of kin of a wife after the death of the surviving husband and failure of children. Held, upon the terms, to be an exception to the general rule, and to mean, not the wife's next of kin at her death, but at the death of the surviving husband. *Pinder* v. *Pinder*. vol. 28, p. 44

19. By a marriage settlement, which gave successive life interests to the husband and wife, the ultimate trust of the fund, in the event of the husband surviving the wife and of there being no children, was "in trust for the person who under the Statute of Distributions would then be entitled to the personal estate of the wife, in case she had survived her husband and had died possessed of the same intestate." Held, that the next of kin intended were not those at the wife's death, but those at the death of the surviving husband. *Ibid.*

20. By a marriage settlement personal estate of the wife was settled in trust for the husband and wife for their respective lives, and afterwards for the children of the marriage, and in default for the wife if she survived her husband; but if she predeceased him, then (subject to his life interest) for such person as, at the decease of the wife, would, under the statute, have been entitled to her personal estate, as her next of kin, in case she had survived her husband and had afterwards died intestate. The husband survived the wife. Held, that her next of kin ascertained at the husband's death were entitled. *Chalmers* v. *North*. vol. 28, p. 175

21. The ultimate limitation in a marriage settlement was "for the next of kin of the wife as if she had not been married, and not including the husbands of both or either of her sisters." Held, that the sisters, who were her next of kin, took as joint tenants. *Lucas* v. *Brandreth*. (No. 2.) vol. 28, p. 274

NEXT PRESENTATION.

[*See* ADVOWSON.]

NOTICE.

[*See* EQUITABLE MORTGAGE, FOLLOWING ASSETS, PRIORITY, STOP ORDER, WAIVER.]

1. *A. B.*, the executor and also devisee of real estate subject to debts and legacies, mortgaged it, first, to *C. D.* subject to the legacies, and afterwards to *E. F.* subject to the mortgage to *C. D.* Held, that *C. D.* took subject to the debts to *E. F.*, taking with notice of *C. D.*'s mortgage, took subject to the legacies. *Eland* v. *Eland*. vol. 1, p. 235

2. On a purchase from a mortgagee, of a fund standing in the name of trustees, it is not an essential blot on the title, that notice of the incumbrance was not given to the trustees, if it can be shewn that no subsequent incumbrancer has given notice.

Whether the title to a trust fund is bad, where, in consequence of the death of trustees, information cannot be obtained from them of the incumbrances of which they had received notice, *quære*. *Hobson* v. *Bell*. vol. 2, p. 17

3. Constructive knowledge imputed to the Plaintiffs by the Court, of an infringement of their copyright by the Defendants. *Lewis* v. *Chapman*. vol. 3, p. 133

4. A general recital in a deed, that there were mortgages on the estate, held to affect parties claiming under the deed with notice of a mortgage not specified therein. *Farrow* v. *Rees*. vol. 4, p. 18

5. The purchaser of a charity lease takes with notice of the facts appearing thereon, shewing its equitable invalidity. *The Attorney-General* v. *Pargeter.* vol. 6, p. 150

6. A mortgage was made "subject to prior incumbrances." Held, under the circumstances, that a prior equitable charge was not included, it being unknown to the mortgagee, and it not appearing to have been the intention of the mortgagors to include it. *Greenwood* v. *Churchill.* vol. 6, p. 314

7. Upon a question whether one partner had notice of the irregular course of dealing of his co-partner, to the prejudice of their customer, the Court was of opinion, that he ought to be deemed to have known the facts, it appearing from the evidence, that if he had used ordinary diligence and attention in the management of the business, he might and must have discovered all the material facts; that the means of knowledge were within his power; that he would, with very little trouble, have found confusion and irregularity in the accounts, a proper investigation of the sources of which would have led to discovery of all that had been done. Held, also, that under such circumstances, the Court, for the protection of those who deal with partnerships, must impute the knowledge which the partners, acting for their interests and in discharge of their plain duty, might and ought to have obtained. *Sadler* v. *Lee.* vol. 6, p. 324

8. On a question of priority of incumbrances on shares, notice to one of a joint-stock company is not notice to the company. *Martin* v. *Sedgwick.* vol. 9, p. 333

9. *A.* held shares as trustee, and executed a declaration of trust, but no notice was given at the office of the company. *A.* afterwards mortgaged his shares to secure his private debt. Notice of this mortgage was given to the company, and was entered in their books. Held, that the mortgagee had priority over the *cestui que trust.* *Ibid.*

10. A party taking an equitable mortgage with notice of prior equitable mortgage, cannot, by assignment to another without notice, give him a better title. *Ford* v. *White.* vol. 16, p. 120

11. *A.* agreed to grant a lease to *B.*, who knew that *A.* held under a leasehold title. Held, that *B.* must be deemed to have known that *A.* could only grant a lease with such restrictions as those under which he held. *Lewis* v. *Bond.* vol. 18, p. 85

12. The purchaser of property has notice of the interests of a tenant in possession, and the purchaser of leaseholds has notice of what it is he purports to buy, and that he must be bound by all the covenants in the lease; but one who contracts for a lease from a party with knowledge that he holds under a leasehold title, has notice of ordinary but not of unusual covenants in the original lease. *Wilbraham* v. *Livesay.* vol. 18, p. 206

13. The absence on a deed of a receipt for the consideration, though it is notice of its nonpayment, is not constructive notice of other irregularities in the transaction. *Greenslade* v. *Dare.* vol. 20, p. 284

14. Whether the notice of the existence of a settlement was not notice of its contents, *quære.* *Jameson* v. *Stein.* vol. 21, p. 5

15. A will was inaccurately recited in a conveyance. Held, nevertheless, that the purchaser had notice of the real contents of the will. *Hope* v. *Liddell* (No. 1); *Liddell* v. *Norton.* vol. 21, p. 183

16. Where two charges on a *chose in action* are contained in one deed, and a notice is given to the trustees which specifies one only, the trustees have not constructive notice of the contents of the deed, so that notice of both charges is to be imputed to them. *Re Bright's Trusts.* vol. 21, p. 430

17. *A.*, having a contingent reversionary interest in a fund vested in trustees, sold and assigned a portion of it to *B.* The assignment contained a covenant on the part of *A.* to insure his life against the contingency, and to pay the premiums, and, in default, to charge the fund therewith. *B.* gave the trustees notice of the deed so far as related to the purchase only, but not as regarded the charge for the insurance. Held, that, as to subsequent incumbrancers on the fund who had given due notice, *B.* had priority to the extent only of his purchase, and not in respect of the charge for insurance. *Ibid.*

18. *A.* sold to *B.* (the owner of the adjoining premises) the right of using two chimneys in *A.*'s wall. The consideration was paid, and they were used for eleven years, but no grant was executed. *C.* purchased *A.*'s house without notice of the right; but there being fourteen chimney-pots on the wall and only twelve flues in *A.*'s house, the Court held, that *C.* was put on inquiry, that he had constructive notice of the right, and was bound by it, and an injunction was granted to restrain *C.* from stopping up the two chimneys. It was also held, that it was not necessary that the bill should pray for a specific performance, and that the absence of a grant was immaterial. *Hervey* v. *Smith.* vol. 22, p. 299

19. A first incumbrancer on a reversionary legacy gave due notice to the trustees. A fund was afterwards brought into Court to provide for the legacy, and a

second incumbrancer obtained the first stop order on it. Held, that he did not thereby obtain priority over the first incumbrancer. *Livesey* v. *Harding*. vol. 23, p. 141

20. Where there was a right of forfeiture of shares, on giving ten clear days' notice, Held, that a notice to forfeit "on Monday the 9th" was insufficient, the 9th being on a Friday. *Watson* v. *Eales*. vol. 23, p. 294

21. A mortgage was given for a judgment debt. There was a prior equitable charge, of which the mortgagee had no direct notice, but no investigation of title or production of deeds was had, besides which, by arrangement, the mortgagor's solicitor prepared the deed for the mortgagee's solicitor. The Court concluded, that the arrangement was to give a mortgage subject to existing charges, and also, that the mortgagee was affected by the notice possessed by the mortgagor's solicitor of the prior equitable title. *Tweedale* v. *Tweedale*. vol. 23, p. 341

22. The rule that a purchaser has constructive notice of the rights of the tenant, is not limited to the terre-tenant, who is in the actual occupation, but it extends also to the person who is known to receive the rents from the occupier of the land. *Knight* v. *Bowyer*. vol. 23, p. 609

23. The purchaser of a charge upon an estate had notice that the rents were received by *A. B.*, and not by the owner of the estate. Held, that the notice that the tenants paid their rents to a person other than the owner, was notice of the instrument by which they were compelled so to pay them, and of the rights of all parties thereunder. *Ibid.*

24. A mortgagee, who is informed that there are "charges" affecting the property, and is cognizant of two only, cannot claim to be a purchaser without notice of other charges, because he believes that the two which satisfy the word "charges," are all the charges upon it. He is bound to inquire whether there are any others.

The rule with respect to the consequence of a purchaser abstaining from making inquiries, does not depend exclusively on a fraudulent motive for such abstinence. When the circumstances of a case put a purchaser on inquiry, a false answer, or a reasonable answer given to any inquiry, may dispense with the necessity of further inquiry; but where no inquiry has been made, it is impossible to conclude that a false answer would have been given if an inquiry had been made, or such as would have precluded the necessity of any further inquiry. *Jones* v. *Williams*. vol. 24, p. 47

25. A real estate belonged to three partners; one retired and conveyed his share to the two others, "subject to all charges and mortgages affecting the same," and the two made an equitable mortgage to the Defendants. There were three charges on the property, but the Defendants knew of two only, and made no inquiry as to there being more. Held, that, having notice of the terms of the conveyance to the surviving parties, the Defendants were bound to inquire whether there were any other charges, and not having done so, that they could not, as against the third equitable charge, insist on being purchasers for valuable consideration without notice. *Jones* v. *Williams*. vol. 24, p. 47

26. A change of the title of the firm in a banker's pass-book, and entries therein to the credit of the new firm of the interest of securities given by the customer to the original firm, Held to be notice of the assignment to the new firm of the securities given by the customer to the old firm. *Cavendish* v. *Geaves*. vol. 24, p. 163

27. A patentee assigned half the patent to *A.*, and afterwards he assigned the whole to *B.*, by a deed, reciting that he had already granted a licence to work and use to *A.* *B.*'s assignment was first registered. Held, that *B.* had constructive notice of *A.*'s rights, and an entry was ordered, on motion, to be made in the register, that the licence referred to in *B.*'s assignment was the deed of assignment to *A.* subsequently entered. *Re Morey's Patent*. vol. 25, p. 581

28. A shipowner, on the 20th of *March*, 1857, chartered his ship to *A.* for a voyage to *Hong-Kong*. The freight was payable "by approved bill on *London* at three months' date, or cash under discount, following the delivery of a certificate to the charterers, signed by the consignees" of the delivery of the cargo. On the 24th of *March*, the shipowner assigned the freight to *C.*, who gave no notice to *A.* until *November* following. It turned out, that on the 23rd of *March*, *A.* had sub-chartered the ship to *B.*, whose agent at *Hong-Kong* had paid the freight to the agent there of the shipowner. Held, that *A.* was still liable to *C.* for the freight, and that *C.*'s laches in giving notice had not deprived him of his right. *Young* v. *Lindsay*. vol. 27, p. 405

29. *A. B.* was entitled to a reversionary interest in a fund vested in four trustees, of whom he was one. *A. B.* mortgaged his interest to *C. D.*, another trustee. Held, that *C. D.*'s notice in the transaction was a sufficient notice to the trustees of the mortgage, but that *A. B.*'s notice was not. *Willis* v. *Greenhill*. (No. 1.) vol. 29, p. 376

30. Notice of a deed, held to be notice not only of its contents, but of the facts the

knowledge of which the insisting on its production would have necessarily led to. *Peto* v. *Hammond.* vol. 30, p. 495

31. The owner in fee of two plots of land demised the first for an hotel, and covenanted that he would not let any house or land, within a certain distance of it, to be used as an hotel. He demised the second plot, which was within the distance, to another person. The Defendant purchased the reversion of the second plot and afterwards bought up the lease of it, but, as the Court held, with notice of the restrictive covenant relating to the first lot. Held, that he was in equity bound by that covenant. *Jay* v. *Richardson.* vol. 30, p. 563

32. The rule, that notice to one partner in an ordinary trading partnership is notice to all the partners, does not apply to a joint-stock company. *In re Carew's Estate Act.* (No. 2.) vol. 31, p. 39

33. Knowledge of a particular fact relating to the accounts, by one director of a banking company, is not notice to the company, where that director had no voice in the management of the accounts, and the money transactions of the company were conducted exclusively by a manager under three directors, of whom the director possessing the knowledge was not one. *Ibid.*

34. Colonel *W.* fraudulently obtained possession of acceptances of *C.*, and he got them discounted and carried to his account by a banking company to whom he was greatly indebted, and of which he was a director and local manager. Held, under the circumstances, that the bank had notice, and could not be considered *bonâ fide* owners. *Ibid.*

35. *A. B.*, having assured his life, wrote to the assurance company, "please to take notice that I wish to transfer my interest in the policies" to *C. D.* The letter was delivered to the company and noted in their books. Held, that this was a good equitable assignment, as against a subsequent assignee of the policies, who had in addition obtained possession of the policies. *Chowne* v. *Bayley.* vol. 31, p. 351

36. Extent to which a purchaser is held to have notice of the contents of documents referred to in the particulars of sale. *Cox* v. *Coventon.* vol. 31, p. 378

37. If property is declared to be sold subject to the provisions contained in a deed which is specially referred to, without mentioning its contents, and which deed can be examined before the sale by the purchaser, he is bound by everything contained in that deed. But if the vendor, instead of referring the purchaser to the deed to ascertain its contents, himself states what the contents are, the purchaser is not bound to examine the deed itself, but may reasonably trust to the representation of it, contained in the particulars of sale, as being a correct statement of its contents. *Cox* v. *Coventon.* vol. 31, p. 378

38. As between two equitable assignees, the time when notice is given to a person who afterwards becomes the trustee is of no importance, if both notices are given previous to the period when the relation of trustee or *cestui que trust* is created. *Webster* v. *Webster.* vol. 31, p. 393

39. Bankers advanced to customers 300*l.* to redeem some railway stock which had been transferred to another firm as a security for that sum. The stock was thereupon transferred in blank to the bankers. Subsequently, the customers, in a letter to the bankers, stated that they had been requested by their "principal" to extend the term of the loan on the stock. The stock actually belonged to a third party, *A. B.* Held, that, after the receipt of this letter, the bankers had constructive notice of *A. B.*'s right to the stock, and that no subsequent advances made by the bankers to the customers could affect the stock. *Locke* v. *Prescott.* vol. 32, p. 261

40. The estate of a tenant for life was liable to forfeiture on his mortgaging it. He mortgaged it to *C. D.* unknown to the parties taking under the forfeiture. Held, that *C. D.* was liable to account to them for the rents, at all events from the filing of the bill, and, beyond that, from the time he had notice of the trusts creating the forfeiture. *Hennessey* v. *Bray.* vol. 33, p. 96

41. The rule is, generally, that a client must be treated as having had notice of all the facts which, in the same transaction, have come to the knowledge of his solicitor; and that the burden of proof lies on the client to shew that there is a probability, amounting to a moral certainty, that the solicitor would not have communicated those facts to his client. *Thompson* v. *Cartwright.* vol. 33, p. 178

42. Notice of a charge on a fund given to one before the fund comes into his possession is wholly ineffectual. *Somerset* v. *Cox.* vol. 33, p. 634

43. Parol notice given to a trustee of an incumbrance on the trust fund is sufficient; but a statement to a trustee, in a casual conversation, is insufficient notice to him. *Re Tichener.* vol. 35, p. 317

44. A mortgagee of a trust fund gave no notice to the trustee until after the mortgagor's bankruptcy; but he gave notice before the assignees had given notice to the trustee of their right. Held, that the trust fund was in the order and disposition of the bankrupt and belonged to the assignees. *Ibid.*

45. The assignee of an underlease held to

have constructive notice of a covenant in restraint of trade contained in an assignment of the original lease, he having precluded himself, by agreement, from examining the prior title. *Clements* v. *Welles.* vol. 35, p. 513

46. By a rule of a mutual assurance society, the insured was bound to give notice to the directors of any change of the captain of his vessel, and, in case of default, the society was not to be liable for any subsequent loss. By another rule, notices to members sent by post were to be effectual, though not actually received. Held, that the directors of the society were members within the latter rule, and that a notice of a change of captain sent to them by post was valid, though not actually received by them. *Branford* v. *Howard.* vol. 35, p. 613

47. *A.* conveys a plot of land to *B.* in fee, and remains owner in fee of an adjoining plot. *A.* and *B.* for themselves, their heirs and assigns, enter into reciprocal covenants against building on their respective plots. Held, that whether these covenants run with the land or not, all persons claiming under *A.* and *B.* are bound by the covenants. *Western* v. *Macdermot.* vol. 35, p. 243

NOVATION OF CONTRACT.

[*See* RESCINDING CONTRACT.]

1. The absolute interest in some freeholds belonging to a wife for life, with remainder to her husband in fee, was sold by the husband. The wife dissenting. Held, that the contract could not stand as a sale of the reversion at an apportioned price. *Dally* v. *Wonham.* vol. 33, p. 154

2. In *May* the Plaintiff agreed to purchase an estate, including hay and growing crops, for 9,000*l.* The purchase was to be completed in *June*, when the Plaintiff was to be let into possession, and if not then completed, the Plaintiff was to pay interest on the purchase-money. By subsequent agreement, *November* was substituted for *June*. The contract was not completed until the following *February*, and in the meantime the vendors had sold the hay and used the garden produce. Held, that under the altered contract, the Plaintiff was not entitled to this hay or produce. *Webster* v. *Donaldson.* vol. 34, p. 451

NUISANCE.

[*See* SEWAGE.]

1. The *onus* of proof lies on any person, who, on the ground of nuisance, seeks to prevent his neighbour from dealing with his own property as he pleases. *Oldaker* v. *Hunt.* vol. 19, p. 485

2. Though *A.* may be disentitled, by acquiescence, to an injunction to stop *B.*'s manufactory, which is noxious to the neighbourhood, yet it does not consequently follow that *B.* is entitled to an injunction to prevent *A.*'s recovering damages at law. Equity may leave both parties to their legal rights. *Bankart* v. *Houghton.* vol. 27, p. 425

3. Acquiescence in the erection of noxious works, while they produce little injury, does not warrant the subsequent extension of them to an extent productive of great damage. *Ibid.*

4. Injunction to prevent, on the ground of acquiescence, a party injured by copperworks from enforcing a judgment recovered by him for damages at law refused with costs. *Ibid.*

5. The Defendant allowed a noxious and offensive refuse water to flow from his manufactory into an old pit on his own land, but which percolated underground into the Plaintiffs' colliery. The Defendant was restrained by perpetual injunction. *Turner* v. *Mirfield.* vol. 34, p. 390

OFFICE COPY.

1. The papers in the suit were accidentally burnt in the offices of the relator's solicitor, and new office copies became necessary for the hearing of the cause. A decree was afterwards pronounced against the Defendant, with costs, as between party and party. Held, that the extra costs occasioned by this accident ought not to be borne by the Defendant. *The Attorney-General* v. *Kerr.* vol. 3, p. 425

2. In a civil proceeding at law, the office copies of the depositions in Chancery being good evidence, the originals will not be ordered to be produced. *The Attorney-General* v. *Ray.* vol. 6, p. 335 (See *Lovell* v. *Yates.* vol. 4, p. 229)

3. In the long vacation, when a matter presses, the Court will sometimes take the original affidavits into its custody, and act on them as if they had been filed; but when the Court is sitting, office copies alone can be used. *Attorney-General* v. *Lewis.* vol. 8, p. 179

4. Before ordering the production of original records, the Court requires it to be shewn that the office copies will not be sufficient. *Anonymous.* vol. 13, p. 420

5. An order of course made, saving just exceptions, under the 19th Consolidated Order, rule 4, to read proceedings in bankruptcy at the hearing of the cause. *Lake* v. *Peisley.* vol. 35, p. 125

OFFICER OF COURT.

[*See* CLERK IN COURT, COMMISSIONER, PROCESS.]

1. The Court would not prospectively dispense with the usual oath of the messenger, to whose custody an answer is confided. *Rigby* v. *Pinnock*. vol. 8, p. 575
2. Where a person seeks for damages, on the ground of the improper use of the process of this Court, and the person against whom the complaint is made may have the matter tried at law. *Whitehead* v. *Lynes*. vol. 34, p. 161

OFFICIAL LIQUIDATOR.

[*See* WINDING-UP.]

1. A suit was instituted by three members of a *Freehold Land Society*, on behalf, &c., against another member. The society was afterwards ordered to be wound up; and on the application of the three Plaintiffs, the name of the official manager was substituted as Plaintiff. The Judge would not allow the official manager to prosecute the suit, who then moved to stay proceedings therein, on such terms as the Court should think fit. The motion was refused with costs, to be paid by the official manager personally. *Caldwell* v. *Ernest*. (No. 1.) vol. 27, p. 39
2. A suit was instituted by the official manager of a company appointed under an order of this Court to wind it up. Held, that the Defendant might contest the validity of the order, and shew that the Court had no jurisdiction to make it. *Plumstead Water Company* v. *Davis*. vol. 28, p. 545

OPENING BIDDINGS.

[*See now* 30 & 31 VICT. c. 48, s. 7.]

1. On opening the biddings in the case of property held for lives, the Court imposed the condition, that the party opening should be bound by his offer, if no better bidding *could be enforced*. *Walond* v. *Walond*. vol. 8, p. 352
2. A purchaser under the Court died before confirmation of the report. Held, that it was not necessary to serve his heir with notice of an application to open the biddings. *Templer* v. *Sweet*. vol. 8, p. 464
3. When biddings were opened, the purchaser was entitled to interest on his deposit at four per cent. *Banks* v. *Banks*. vol. 16, p. 380
4. A party opening biddings was ordered to deposit the amount of his advance, but was not required, in the first instance, to pay into Court the amount of the original deposit. Upon his neglect to make the required payment, the order to open biddings was discharged with costs, to be paid by him. *Banks* v. *Banks*. vol. 16, p. 380
5. On a sale under the Court, two persons agreed not to bid against each other, but that one should bid up to 1,500*l*. and divide the lot between them. They bought it for 650*l*. Held, that this agreement furnished no ground for opening the biddings, or annulling the sale. *In re Carew's Estate*. vol. 26, p. 187
6. Taxation of costs incurred by purchaser, which a party opening the biddings submitted to pay. *Raymond* v. *Lakeman*. vol. 34, p. 584

OPTION TO PURCHASE.

[*See* PRE-EMPTION.]

1. A yearly tenant, having the option of purchasing the property, filed his bill against the landlord, for a specific performance of the contract for sale. The landlord having proceeded to eject the Plaintiff, the latter applied for an injunction to restrain him; but the Court declined granting it, except on the terms of the Plaintiff undertaking to continue to pay the rent, without prejudice. *Pyke* v. *Northwood*. vol. 1, p. 152
2. Partnership stipulation, that a son of one partner, or in case of his minority, the executor should, on the death of such partner, succeed to his share. The Court, on the terms of the partnership deed, considered it an option, and not an obligation. *Madgwick* v. *Wimble*. vol. 6, p. 495
3. The grantee of an annuity effected a policy on the life of the grantor, at his own expense. The grantor had a power of redemption on payment of 2,500*l*., and it was provided, that in case the grantor should, "at the time of making such repurchase," by notice in writing elect to take the policy, the grantee would assign to him any policy "then vested" in him, which might be effected in respect of the annuity; but it was declared that it should not be incumbent on the grantor to keep on foot any policy. The policy became valuable, and the grantor gave the month's notice of repurchase, and declared his election to take the policy. Held, that the grantee had no right afterwards to surrender the policy for his own profit; and, *semble*, that although he might have let the policy drop, yet he was not, at any time, entitled to surrender it for his own profit. *Hawkins* v. *Woodgate*. vol. 7, p. 505
   (See *Bashford* v. *Cann*. vol. 33, p. 109)
4. A letting, in 1845, to a yearly tenant, and if he should wish a lease, that the lessor will grant the same for seven, fourteen or twenty-one years, at the same rent, is sufficiently certain to be specifi-

cally performed. It is to be construed an optional lease for twenty-one years from 1845, determinable at the end of seven or fourteen years, at the option of the tenant. *Hersey* v. *Giblett.* vol. 18, p. 174

5. Under such a contract, the landlord might call on the tenant to exercise his option, and, in default, might determine the tenancy, but this might afterwards be waived by a receipt of rent. *Ibid.*

6. A testator gave to his son the option of purchasing an estate, at what to his trustees "should seem a fair and reasonable value." The trustees had a valuation made which amounted to 1,500*l.*, but the valuation made at the instance of the parties interested in the produce exceeded that by one-third. Held, that the trustees having fixed what they considered "a fair and reasonable value," having authority to do so, it was incumbent on the Plaintiff to shew that it was fraudulent, in order to prevent the son's purchasing at 1,500*l.* *Edmonds* v. *Millett.* vol. 20, p. 54

7. A testator authorized his executors, in case his nephew and clerk "should elect to carry on his business, to permit them to do so without any payment for goodwill;" the value of the stock was to be ascertained by arbitration, and to be payable by instalments within ten years. Held, that this conferred a right on the nephew and clerk as specific legatees, and not a mere discretion on the executors. But the rights of the creditors being paramount, it was held, that if the proceeds of the business were necessary for the payment of the debts, the nephew and clerk must at once provide sufficient for their payment. *Fryer* v. *Ward.* vol. 31, p. 602

8. In 1856 the Defendant agreed with *G. F. B.* to grant him a lease of some property for three years, with an option for *G. F. B.* to call for a lease for three years, or for the whole of his, the Defendant's, term. In 1864 *G. F. B.* became bankrupt, and his assignee sold his interest to the Plaintiff, who called on the Defendant to grant the extended term. Held, on demurrer, that the Plaintiff was entitled to relief. *Buckland* v. *Papillon.* vol. 35, p. 281

ORDER.

[*See* DECREE, DISCHARGE OF ORDER, ORDER BY CONSENT, ORDER EX PARTE.]

ORDER BY CONSENT.

[*See* CONSENT.]

An order was made, on petition and by consent. Held, that it could only be varied by a proceeding in the nature of one to correct the agreement, on the ground of fraud or suppression of facts. *Greenwood* v. *Churchill.* vol. 14, p. 160

ORDER EX PARTE.

[*See* DISCHARGE OF ORDER, IRREGULARITY, WAIVER.]

1. Where an application is made at the Rolls to discharge an order of course, obtained in a Vice-Chancellor's cause, the Court can only consider the regularity of the order as an order of course, and will not enter into the merits. *Brooks* v. *Purton.* vol. 4, p. 494
(*St. Victor* v. *Devereux.* vol. 6, p. 584
Holcombe v. *Antrobus.* vol. 8, p. 405
Arnold v. *Arnold.* vol. 9, p. 206)

2. The rule is general, that the Court will not, on an application to discharge an order of course, for irregularity, sustain it as an order obtained adversely on merits. *Brooks* v. *Purton.* vol. 4, p. 494
(*Grove* v. *Sansom.* vol. 1, p. 297)

3. The Plaintiff submitted to a demurrer by omitting to set it down within twelve days, and the Vice-Chancellor ordered him to pay the costs of suit. The Plaintiff afterwards obtained at the Rolls an order of course to amend, suppressing in his petition the order of the Vice-Chancellor. It was discharged for irregularity on the ground of the suppression. *Cartwright* v. *Smith.* vol. 6, p. 121

4. The Plaintiff, upon filing a demurrer wrote to say he submitted thereto, and would obtain an order to amend. More than two months afterwards he obtained an order, as of course, to amend, it was discharged for irregularity. *Hearn* v. *Way.* vol. 6, p. 368

5. A Defendant obtained a reference under the Contempt Act, to inquire whether by poverty he was unable to answer. The Master reported in the negative. By an order of the Vice-Chancellor the bill was taken *pro confesso*, without prejudice to the Defendant applying within ten days to put in his answer. The Defendant, suppressing the previous circumstances, then obtained an order of course for leave to defend *in formâ pauperis.* The order was discharged. *Nowell* v. *Whitaker.* vol. 6, p. 407

6. An application for an order of course should state all the material facts. If there be any suppression, the order will be discharged, and the Court will not, on the application to discharge it, support it on the special merits then, for the first time, appearing. *St. Victor* v. *Devereux.* vol. 6, p. 584

7. A Plaintiff claiming partly under the heirs of a French subject, and, through

an instrument of doubtful construction, obtained an order of course at the Rolls to sue *in formâ pauperis*, upon the simple allegation of his poverty. Held, that the order was irregular, on the ground of the suppression of the facts, which ought to have been presented for the consideration of the Court upon the application. *St. Victor* v. *Devereux*. vol. 6, p. 584

8. Order of course discharged with costs, having been obtained upon a suppression of material circumstances. *The Marquis of Hertford* v. *Suisse*. vol. 7, p. 160

9. An order of course alleged to have been irregularly obtained cannot be treated as a nullity. It operates until, by a proper application, it is discharged. *Blake* v. *Blake*. vol. 7, p. 514

10. Order of course to amend obtained one day too late, discharged. *Harrod* v. *Gibson*. vol. 8, p. 90

11. A client who had employed a solicitor in several matters, obtained an order of course for the taxation of the costs of one matter only, with a direction, that on payment the solicitor should deliver all the papers belonging to the client. It was discharged with costs for irregularity. *Holland* v. *Gwynne*. *In re Byrch*. vol. 8, p. 124

12. An order of course was obtained at the Rolls in a cause attached to another branch of the Court. The order became inoperative by reason of delay in service. Held, that the order having been regularly obtained, a motion to discharge it, if necessary, was not properly made at the Rolls. *Plomer* v. *Macdonald*. vol. 8, p. 191

13. In respect of orders of course made at the Rolls in a Vice-Chancellor's cause, the Master of the Rolls has no jurisdiction over anything but the alleged irregularity and the incident costs. In such cases the merits or special circumstances cannot be considered by the Master of the Rolls except upon the question of incidental costs. *Holcombe* v. *Antrobus*. vol. 8, p. 405

14. Order of course for taxation discharged, on the ground of the case being misstated upon the petition for the order. *In re Carven*. vol. 8, p. 436

15. A Defendant upon filing his plea, obtained an order of course for his discharge, suppressing the fact that the Plaintiff had previously given notice of motion to take the plea off the file. The order was discharged for the suppression. *Wilkin* v. *Nainby*. vol. 8, p. 465

16. *A. B.*, who claimed some property, conveyed it to trustees, upon trusts for carrying on the litigation, and payment of the costs, &c. The trustees employed a solicitor, and they raised a sum of money, upon *A. B.*'s notes drawn for the purpose, which they placed in the solicitor's hands. *A. B.* alone obtained an *ex parte* order for taxation; it was discharged for irregularity. *Ex parte Mobbs*. vol. 8, p. 499

17. An order of course for referring exceptions for insufficiency, obtained within the proper limit as to time, but amended after its expiration, discharged for irregularity. *Wool* v. *Townley*. vol. 9, p. 41

18. An order of course may be amended before service, but *semble*, that after service it cannot be amended in the absence of the party to be affected thereby. *Ibid.*

19. In discharging an order of course attached to another Court the Master of the Rolls has not authority to direct the costs to be costs in the cause. *Ibid.*

20. A demurrer being overruled with costs, the Defendant appealed. The Plaintiff afterwards obtained an order of course to dismiss his bill with costs, suppressing the fact of the allowance of the demurrer; it was discharged for irregularity. *Lewis* v. *Cooper*. vol. 10, p. 32

21. Order of course for taxation discharged on the ground of the suppression of an alleged previous reference to arbitration, though the fact was disputed. *De Feuchères* v. *Dawes*. vol. 11, p. 46

22. A plea was overruled and ordered to stand for an answer. Exceptions were then taken and submitted to; after which, a warrant was taken out for time to answer, which was consented to. The order, as drawn up, gave leave to plead, answer, or demur, &c. The Defendant filed a second plea. An application to take it off the file was refused until the order of the Master had been discharged. *Chambers* v. *Howell*. vol. 12, p. 563

23. The order was afterwards discharged, on proof that satisfied the Court that it was not in accordance with the consent. *Ibid.*

(See *Newman* v. *White*. vol. 16, p. 4)

24. A party applying *ex parte* for an order to tax should state everything which can have a bearing on the matter, otherwise the order will be discharged. *In re Walker*. vol. 14, p. 227

25. The rule that on application for orders of course all material facts must be stated is to be strictly adhered to. *Re Winterbottom*. vol. 15, p. 80

26. An application to the Master of the Rolls to discharge a Rolls' order of course, made in a cause attached to another branch of the Court, refused with costs. *Cooper* v. *Knox*. vol. 15, p. 102

27. When a demurrer has been overruled, and an appeal from the order is pending, an *ex parte* order to amend is irregular; and a Plaintiff having obtained such an order, after he had notice that the appeal had been set down, it was discharged with costs, and the amendments were expunged. *Ainslie* v. *Sims*. vol. 17, p. 174

28. A client obtained an order of course for the taxation of his solicitor's bill. A special agreement existed between them, which ought to have been mentioned on the application, but this was in the possession of the solicitor, who refused to furnish a copy. The Court declined to discharge the order, though irregular. *Re Ingle.* vol. 21, p. 275

29. Upon a motion for an injunction, the Defendant consented to an immediate decree, but he became bankrupt before the decree had been drawn up, and his written consent to set down the cause could not be obtained. The Court made the order for setting down the cause and dispensed with the consent. *Brighouse* v. *Margetson.* vol. 35, p. 303

ORDER OF ASSETS.

[*See* ADMINISTRATION, EXONERATION, ORDER OF DEBTS, PAYMENT OF DEBTS AND LEGACIES.]

1. Where real estates are devised to the heir, although for certain purposes he takes by descent; yet, as between him and the devisees of other parts of the testator's estates, the estates devised to the former are not to be applied in payment of the debts in priority to the estates devised to the latter. *Biederman* v. *Seymour.* vol. 3, p. 368

2. Though the creditors of a testator have a right to resort to the estate devised to the heir, in priority to the other devised estates, yet the heir is entitled to contribution from the other devisees, to the extent to which his estate may be exhausted by debts. *Ibid.*

3. *A. B.* and the other committeemen of a public company mortgaged the company's estate, and covenanted personally to pay the money. They afterwards entered into a personal obligation, by bond for another debt. *A. B.* died, having certain shares vested in him as trustee to the company. By the decree, the shares were ordered to be sold, and the produce applied in payment of the debts of the company, for which the estate of *A. B.* was liable Held, that the representatives of *A. B.* had a right to have the fund applied in payment of the bond debt, in priority of the mortgage debt. *Lawrence* v. *Kempson.* vol. 7, p. 574

4. Costs of suit apportioned between real and personal estate. *Bunnett* v. *Foster.* vol. 7, p. 540
(*Johnston* v. *Todd.* vol. 8, p. 489
Hopkinson v. *Ellis.* vol. 10, p. 169)

5. A testator directed all his debts, in the first place, to be paid out of his personal estate, except his leaseholds, if sufficient, and, if not, he charged his real estate therewith. Held, that the specific legacies were liable to the payment of the debts in priority of the real estate. *Bateman* v. *Hotchkin.* vol. 10, p. 426

6. A testator devised two estates in different ways, and he charged one only with the payment of his debts, funeral and testamentary expenses. In a creditors' suit, both estates were sold for payment of the debts. Held, that the charged estate was primarily liable for the costs of suit. *Wilson* v. *Heaton.* vol. 11, p. 492

7. Legacies directed to be invested, and to become payable and paid in a certain order, with interest from the testator's death. The assets being deficient, the Court on the context, held, that they were payable *pari passu.* *Lord Dunboyne* v. *Brander.* vol. 18, p. 313

8. A testator, by his will, directed 60,000*l.* to be invested in lieu of 6,000*l.* secured by his marriage settlement, and the interest to be paid to his wife for life, and, after her decease, the principal to be applied as therein mentioned. He then directed sundry legacies to be invested for certain relatives, to be paid within a year after his death, if they should be of age, and if not, upon coming of age, with interest in the meantime; but the principal sums were not to be paid till after the payment or investment of the 60,000*l.* He then gave other legacies, and directed that the several sums given by his will, and not thereinbefore particularly directed, "*should be invested in the order and become payable and paid* in the manner thereinafter mentioned," and that the 60,000*l.* should be the sum first paid and invested, a legacy to one of his sisters should be the next paid and invested, and so on. Held, that, except as to the 60,000*l.*, the priority intended was a priority of administration or realization of assets, and not of rights and interests; and therefore the estate being insufficient, all the legacies, except the 60,000*l.*, abated *pro ratâ.* *Ibid.*

9. Observations on the doctrine of *Roberts* v. *Walker*, 1 *Russ. & Myl.* 752, as to blending realty with personalty. *Bentley* v. *Oldfield.* vol. 19, p. 225

10. *A. B.* purchased an estate in consideration of an annuity. It was thereupon charged upon the purchased and also on another estate, and *A. B.* covenanted to pay it. On *A. B.*'s death, Held, that his personal estate was the primary fund for payment of the annuity. *Yonge* v. *Furse.* vol. 20, p. 380

11. The testator, after directing payment of his debts, devised his real estate to his executors, upon trust to sell, and he directed that the produce should be deemed part of his personal estate, and that the rents, until the sale, should be deemed part of the annual income of his personal

estate, and that the same moneys and rents should be subject to the disposition thereinafter made to his personal estate and the income thereof; and he bequeathed his personal estate to his trustees to invest it in Consols, upon trust to pay certain legacies. Held, that the real and personal estate were blended and applicable *pari passu* in payment of the debts and legacies. *Simmons* v. *Rose*.
vol. 21, p. 37
(*Shallcross* v. *Wright*. vol. 12, p. 505)

12. It was not the object, nor is it the operation, of the statute of the 3 & 4 *Will.* 4, c. 104, to make the simple contract debts of a deceased person, in the nature of mortgages or specific charges on his real estate, but as the statute makes the land *assets* for the payment of his debts, these debts constitute a general charge upon them, but not so that a *bonâ fide* purchaser of the lands, from the heir or devisee, is bound to see to the application of the purchase-money, as he would be in the case of a particular mortgage on any portion of the lands themselves. *Kinderley* v. *Jervis*.
vol. 22, p. 1

13. The real estate of a deceased person constitutes assets, to be administered in a Court of Equity, according to the priorities specified by the statute, and all the incidents of assets attached to it; and, consequently, such assets are liable, in the first place, to pay the debts of the deceased debtor, and, subject thereto, they belong to his devisee or heir at law, but the devisee or heir at law takes no beneficial interest therein, except subject to and after payment of the debts of the deceased testator or ancestor. *Ibid.*

14. A testator devised part of his real estate in trust for sale to pay his debts "and the costs and charges of proving and attending the execution of his will and the several trusts therein contained." Held, that the costs of an administration suit were charged upon this estate. *Alsop* v. *Bell*. vol. 24, p. 451

15. A testator gave and devised to his executors his freehold house and all his other property he might die possessed of, "in trust for the purposes of his will." Held, that he had not created a mixed fund. *Ellis* v. *Bartrum*. (No. 3.)
vol. 25, p. 110

16. Since the Wills Act (1 *Vict.* c. 26), real estate passing by a residuary devise, held to be subject to debts in priority of specific legacies. *Rotherham* v. *Rotherham*.
vol. 26, p. 465

17. Costs of a suit to administer both real and personal estate, and to ascertain the rights to both, were held payable, primarily, out of the personal estate, notwithstanding the personal estate was, by the will, exonerated from payment of the debts and the costs and charges of proving the will. *Stringer* v. *Harper*. (No. 2.)
vol. 26, p. 585

18. The testator devised real estate to one for life, with remainder to trustees for a term to raise the clear sum of 10,000*l.* for his younger son; and, subject thereto, he devised the estate in strict settlement. The personal estate, not specifically bequeathed, was insufficient to pay the debts, and thereupon the devised estate and specific legacies became liable to contribute rateably towards the deficiency. Held, that, as between the youngest son and the persons taking the estate subject to the term, the whole amount of contribution of the real estate was to be borne by the latter. *Raikes* v. *Boulton*.
vol. 29, p. 41

19. A testator bequeathed a legacy of 4,000*l.*, payable by his trustees out of his personal estate, and, if that should be deficient, out of his real estate. The trustees, having provided for all claims except this legacy, put *W. H.* (who was entitled to the residue) into possession of the real and personal estate. He died many years after, having continued to pay interest on the legacy, and questions then arose, between persons claiming under him, as to the fund out of which the legacy ought to be paid. Held, on the assumption that the first testator left sufficient personal estate, that his personal estate remaining in specie was first liable, and that the deficiency must be provided out of *W. H.*'s assets. Secondly, on the assumption that the first testator's personal estate was deficient, then that his personal estate in specie was first applicable, and that his real estates not alienated for value were liable rateably for the deficiency. *Hepworth* v. *Hill*.
vol. 30, p. 476

20. Residuary devised real estate held to be applicable towards the payment of the testator's debts before his specifically bequeathed personal estate. *Bethel* v. *Green*.
vol. 34, p. 302

ORDER OF COURSE.

[*See* ORDER EX PARTE.]

ORDER OF DEBTS.

[*See* ADMINISTRATION, ORDER OF ASSETS, PRIORITY.]

1. In 1811 a creditor's suit was instituted by a simple contract creditor; the answers were got in in 1820, the Plaintiff's debt was admitted, and thereupon the assets were brought into Court; in 1823 another simple contract creditor obtained judgment against the executors, no decree was made in the cause until 1829. Held,

that the judgment thus obtained had priority over all the simple contract debts. *Larkins* v. *Paxton*. vol. 2, p. 219

2. In a creditor's suit the Plaintiff did not satisfactorily prove his debt, and the bill was retained with liberty to establish the debt at law. *Semble*, that a judgment obtained by him, under such circumstances, would not give him priority over the other simple contract creditors. *Gibert* v. *Hales*. vol. 8, p. 236

"OR" READ "AND."

[*See* "AND" READ "OR," VESTING.]

1. A testator devised an estate in fee to his son, but if he should die under twenty-one, over. By a codicil, he limited the estate over, in the event of the son dying without issue "or" under twenty-one. Held, that "or" must be read "and," and that the executory devise over took effect only on the happening of both events, and consequently, that *A.*, on obtaining twenty-one, had an absolute estate in fee simple. *Morris* v. *Morris*. vol. 17, p. 198
2. "Or" construed "and." *Shand* v. *Kidd*. vol. 19, p. 310
3. In a will, the word "or" was read "and," to give effect to the manifest intention. *Maude* v. *Maude*. vol. 22, p. 290
4. The testator bequeathed 4,000*l.* to his four sons, *B.*, *C.*, *D.* and *E.*, in trust for *A.* for life, with remainder to his issue, and in default, to the four sons, "or," to such other of his sons as should be trustees in succession. He provided that, on the death of either of the four sons, his next surviving son should become a trustee in his place. *A.* survived the four trustees, and died without issue, leaving two of the substituted trustees surviving. Held, that they were not exclusively entitled to the legacy, but that it was divisible equally between them and the representatives of the deceased trustees. *Ibid.*
5. Bequest of residuary personal estate in trust for testator's wife for life, and on her death to pay, &c. to his son *C. A.* on his attaining twenty-one. But if he should depart this life before the wife "or" before attaining twenty-one, then in trust for the Defendants. Maintenance to, and a power to advance *C. A.* were also given. *C. A.* attained twenty-one, but died in the wife's lifetime. Held, that "or" was to be read "and," and that the son took an absolute vested interest on attaining twenty-one. *Bentley* v. *Mesch*. vol. 25, p. 197
6. The word "and" construed "or," in order to give effect to the obvious meaning. *Maynard* v. *Wright*. vol. 26, p. 285
7. A testator devised a freehold in trust to accumulate the rents for periods of not less than ten years successively at a time, at the expiration of which, the accumulations to be paid to the testator's "sons and daughters, or such of them as should be living at the respective periods of division, and the issue of such of them as shall have died leaving lawful issue, such issue taking their deceased parent's share," to be vested interests in the same respectively at the age of twenty-one years, and so on from time to time until the expiration of twenty-one years after the decease of the survivor of her children. And from and after the expiration of the term of twenty-one years, he devised the same premises unto such of his grandchildren and their issue as should then stand, in respect to him, in equal degrees of consanguinity, and their heirs, as tenants in common. Held, that "issue" was to be read "children," and the word "and" to be read "or," and that the devise was neither void for remoteness nor uncertainty. *Maynard* v. *Wright*. vol. 26, p. 285
8. A testator devised real estate to his children and their heirs as tenants in common, with a gift over to the survivors "in the event of any of them dying before having heirs of their body *or* making a particular disposition" of his share. Held, that "or" must be read "and," that the children took in fee, but that the gift over in the event of making no disposition was repugnant and void. *Greated* v. *Greated*. vol. 26, p. 621
9. Gift of annuity, after the death of my mother, "or" the second marriage, death, or forfeiture of my wife. The mother having predeceased the testator. Held, that the annuity was payable from the testator's death, and that "or" could not be read "and." *Hawksworth* v. *Hawksworth*. vol. 27, p. 1
10. Devise to *A.* for life when he attains thirty-one, and after his death to his eldest son in fee. In case *A.* should not live to that age, "or" not have any son, then in trust for *B.* for life, on attaining thirty-one, and after his death to his eldest son in fee, and in case of failure, to the eldest son of the testator's daughter in fee. *A.* attained thirty-one and died without having had issue, and *B.* also died without having issue. Held, that "or" could not be read "and," and that the eldest son of the daughter took the estate. *Cooke* v. *Mirehouse*. vol. 34, p. 27

ORDER.

[*See* DECREE.]

OTHER.

[*See* SURVIVOR.]

OUTLAWRY.

1. Though an outlaw cannot come into court to establish a demand, yet he may apply to the Court to set aside an attachment which has been irregularly issued against him. *Hawkins* v. *Hall.* vol. 1, p. 73
2. An information was filed by the Attorney-General at the relation of *A. B.*, to set aside a fraudulent deed executed by an outlaw in a civil action, between the judgment and inquisition. Held, that statements shewing the interest of the relators and the motives for the execution of the deeds, as against the creditors, were not impertinent. *The Attorney-General* v. *Richards.* vol. 6, p. 444
3. The sheriff's return upon the writ of exigent, that by the judgment of the coroner the Defendant is outlawed, is not, until entered on the roll, a sufficient record of the outlawry. *The Attorney-General* v. *Richards.* vol. 8, p. 380
4. Where, after plea of the Plaintiff's outlawry, the outlawry has been reversed, the Plaintiff may now obtain an order for liberty to proceed with the cause. *Hunter* v. *Ayre.* vol. 23, p. 15
5. A single plea of three outlawries allowed. *Fox* v. *Yates.* vol. 24, p. 271
6. A Plaintiff was outlawed pending the suit. Held, that it was irregular to make the Attorney-General a party in respect of the outlawry, unless a question was raised with regard to its validity or enforcement. *Bromley* v. *Smith.* vol. 26, p. 644

OUTSTANDING TERM.

1. A mortgagee in whom a satisfied mortgage term was vested, held, under the circumstances, bound to assign it to the trustee of the will of a testator, without the concurrence of the parties beneficially interested in the property under it. *Poole* v. *Pass.* vol. 1, p. 600
2. A testator allowed a satisfied mortgage term to remain outstanding in the mortgagee, and he devised the estate to a trustee in such a manner as, in the opinion of the Court, to entitle him to call for an assignment of the term without the concurrence of the parties beneficially entitled: the termor, under the advice of counsel, refused to assign without the concurrence of the parties beneficially interested, and a suit became necessary to compel him. The Court, though of opinion that the termor was not entitled to insist on his objection, gave him his costs, charges and expenses. *Ibid.*

"PAID," &c. READ "PAYABLE."

1. A testator gave his residuary estate to his wife for life, and to be divided amongst and paid to his children on the whole of them attaining twenty-one, and not before; but the payment to be postponed till the death of their mother; and he directed maintenance to be allowed them in the event of the wife's death while the children were under twenty-one; there was a gift over to the children of any child who *should die before receiving his share*, and the testator provided that in case any of his children should die without leaving issue, his share should go over to the survivors. A child attained twenty-one after the widow's decease, but died without issue before receiving her share. Held, that this child's representatives, and not the surviving children, were entitled to her share. *Whiting* v. *Force.* vol. 2, p. 571
2. Where the only gift to a class consisted of a direction *to divide and pay*, upon the death of the tenant for life. Held, upon the context, that those only took who survived such tenant for life. *Beck* v. *Burn.* vol. 7, p. 492

PALATINE COURT.

As to the jurisdiction of the Court of Chancery of the Palatine of *Lancaster* in cases where part of the subject-matter consists of lands locally situate out of its jurisdiction. *Wynne* v. *Hughes.* vol. 26, p. 377

PARAPHERNALIA.

[*See* PIN-MONEY.]

1. Old family jewels do not constitute *paraphernalia*. *Jervoise* v. *Jervoise.* vol. 17, p. 566
2. Pearl ornaments presented to a married woman by a third party, held to be part of her *paraphernalia*. *Ibid.*
3. So, likewise, brilliant bracelets bought by the husband and given to the wife, though worn with the family jewels, constitute part of her *paraphernalia*. *Ibid.*

PARCELS.

[*See* DESCRIPTION OF GIFT.]

1. Upon the construction of the particular instruments, Held, that, by the conveyance of one-fourth "of and in the leat or watercourse," the purchaser acquired no interest in the water, other than such part as remained after supplying the public purposes for which the leat was authorized to be made. *Attorney-General* v. *The Corporation of Plymouth.* vol. 9, p. 67
2. Unascertained and undefined advantages will pass under the general words by a grant of a manor, although not in the contemplation of either party at the

time. Thus, for instance, the minerals in the lord's waste would pass, although their existence was neither known nor suspected by any of the parties to the contract. So also the advowson to a living will pass with a manor by general words, though not specifically named in the grant. *Attorney-General* v. *Ewelme Hospital.* vol. 17, p. 366

3. The testator occupied a house at *B.* and stables in the neighbourhood held under a different title. He bequeathed the lease of the house at *A.*, "with all buildings belonging to me," and what the "buildings may contain." Held, that the stables, and the carriages and horses therein, passed to the legatee. *Kennedy* v. *Keily.* vol. 28, p. 223

4. A testator devised a messuage or dwelling-house, wherein *D. C.* "now resides, with the stables or appurtenances thereto belonging and therewith occupied." Between the date of his will and his death, the testator purchased a garden, which he attached to the messuage. Held, that the garden passed under the devise. *In re the Midland Railway Company; Re The Otley and Ilkey Branch.* vol. 34, p. 525

5. Devise of lands, &c., situate, lying and being within the parish of *G.*, "with the appurtenances, Held not to pass lands thirty-three and a half acres in the parish of *A.*, which had been allotted in respect of land in both parishes, and which had always been let and occupied together. *Lister* v. *Pickford.* vol. 34, p. 576

PARENT AND CHILD.

[*See* ADEMPTION, FATHER AND SON, GUARDIAN, JOINT TENANCY, MAINTENANCE, SATISFACTION, UNDUE INFLUENCE.]

PARISH.

[*See* CHARITY.]

1. The right of selecting new trustees of a parish charity held to belong to the ratepayers in vestry, and not to the surviving trustees. *Attorney-General* v. *Dalton.* vol. 13, p. 141

2. In 1671 an estate was purchased out of parish funds, and was conveyed to the rector, churchwardens, and twelve parishioners, for the relief of the poor inhabitants. The deed was lost. New trustees were appointed by deed, dated in 1701, which recited that the deed of 1671 provided, that when the trustees were reduced to five, they should convey the premises to themselves and eleven other parishioners. In 1725, 1769, 1782, and 1806, new trustees were appointed by the parishioners, but the deeds executed in 1769, 1782, and 1806, contained a proviso that the new trustees should be nominated by the five survivors. In 1831 and 1842 new trustees were appointed by the old trustees. Held, upon the whole, that the last appointments were invalid, and that the right of nominating new trustees belong to the parishioners, and not to the surviving trustees. *Attorney-General* v. *Dalton.* vol. 13, p. 141

3. An information in respect of parish land was filed against churchwardens' *nominatim*, and not in the mode pointed out by the 59 *Geo.* 3, c. 12, s. 17. Before the hearing they were changed. Held, that the Court was not prevented making a decree. *Attorney-General* v. *Salkeld.* vol. 16, p. 554

PARLIAMENTARY DEPOSIT.

1. A bank agreed with the promoters of a railway bill to deposit the exchequer bills required to be deposited in Chancery by the Standing Orders of the House of Commons, and it was agreed that the projectors should withdraw the bill at the third reading, unless the deposit should then have been repaid to the bank. Held, that there was nothing illegal or contrary to public policy in this arrangement. Held also, that a bill would lie to compel the persons in whose names the exchequer bills were invested to restore them to the bank. *Scott* v. *Oakley.* vol. 33, p. 501

2. By a railway act, the parliamentary deposit was not to be paid out of Court until the company should give a certain bond, approved of by the solicitor of the Treasury, whose certificate was to be sufficient evidence of the facts so certified. A bill to recover the deposit alleged that such a bond, but dated anterior to the act, had been given and certified. Held, on demurrer, that this was sufficient. *Ibid.*

PAROL EVIDENCE.

1. Extrinsic evidence is admissible to shew the circumstances of the testator at the time of making his will, so as to enable the Court to place itself in the situation of the testator; but it is inadmissible to prove either his motives or intentions. *Martin* v. *Drinkwater.* vol. 2, p. 215

2. Whether parol evidence or declarations of the testator is admissible to prove a testator's intention, that annuities given by his will should be additional to, and not substitutional for, annuities granted by him in his lifetime, for valuable consideration, *quære.* *Hales* v. *Darell.* vol. 3, p. 324

3. In 1843 a testatrix made several bequests to the amount of 1,000*l.* "of the stock Three per Cent. Consols, then standing in her name in the books of the Bank of *England*." The testatrix died in the same year, and had not at the date of the will or at her death any stock whatever standing in the bank books. It appeared, however, from extrinsic evidence, that in 1840 she had had a sum of of 1,000*l.* Bank Annuities standing in her name, which she sold out and lent to *A. B.*, he paying her, down to her death, a sum equal to the dividends. It was Held, that extrinsic evidence was admissible to prove how the mistake in description arose, and that the legatees were entitled to a sum equal to the value of 1,000*l.* Consols at her death. *Lindgren* v. *Lindgren.* vol. 9, p. 358

4. Erroneous description of a legatee rejected upon extrinsic evidence. *Re Blackman.* vol. 16, p. 377

5. By an agreement in writing *A.* agreed to take an underlease from *B.*, at a rent of 340*l.*, *A.* "paying all taxes, land-tax and insurance." A lease was granted, reserving the rent of 340*l.*, stated to include the land-tax redeemed by the superior landlord. The lessee having refused to pay the amount of the land-tax redeemed, the lease was ordered to be reformed by making him liable for the land-tax, though redeemed. Held also, that parol evidence was admissible to explain the meaning of the parties by "land-tax." *Murray* v. *Parker.* vol. 19, p. 305

6. On a question of construction of a deed, parol evidence is inadmissible to shew the intention of the parties thereto. *Palmer* v. *Newell.* vol. 20, p. 32

7. A testator bequeathed to his son "the sum of *i. x. x.*" Held, that extrinsic evidence was admissible to explain the meaning of these letters. *Kell* v. *Charmer.* vol. 23, p. 195

8. Affidavits held inadmissible to control the operation of a deed. *Cowlishaw* v. *Hardy.* vol. 25, p. 169

9. As to what extent extrinsic evidence is admissible. *Evans* v. *Angell.* vol. 26, p. 202

10. The Plaintiff agreed to take a lease of a public-house from the Defendant (a brewer), but the written contract said nothing as to the restrictive covenants of a brewer's lease. The Plaintiff instituted a suit to obtain an unrestricted lease. The restricted parol agreement being established by extrinsic evidence, Held, that the bill must be dismissed. The Plaintiff having then elected to take a brewer's lease, a decree was made, the Plaintiff paying the costs of the suit. *Barnard* v. *Cave.* vol. 26, p. 253

11. A testator bequeathed a legacy to his niece, *E. S.* After her death he made another will, in which the same bequest was copied. The latter alone was proved. The legacy was claimed by *E. J. S.*, a great-great-niece. Held, that she was entitled, and that parol evidence was inadmissible to shew that the deceased niece was intended. *Stringer* v. *Gardiner.* vol. 27, p. 35

12. Evidence as to statements made by a testator when he executed his will rejected. *M'Clure* v. *Evans.* vol. 29, p. 422

13. On a question of construction of a written instrument, no evidence of the intention of the parties is admissible, though extrinsic evidence may be adduced to shew the position of the parties, the state of the funds and the rights and interests of the parties in them. But in a suit to reform a written instrument, evidence of intention is admissible. Therefore, in a suit raising both questions, the Court, though it received the evidence on the one point, rejected the same evidence when considering the other. *The Earl of Bradford* v. *The Earl of Romney.* vol. 30, p. 431

14. Parol evidence is admissible to prove that lands were purchased by a father in the name of his child not as an advancement, but as a trustee. *Williams* v. *Williams.* vol. 32, p. 370

PART PERFORMANCE.

1. Specific performance of a contract partly by parol, though possession had been given and rent paid, refused, on the ground that it would be violating two rules regulating the exercise of the jurisdiction in specific performance; first, that a written agreement cannot be varied by parol; and secondly, that when a parol agreement is sought to be enforced, on the ground of part performance, it must be shewn, plainly and distinctly, what the terms of the agreement are, and that the acts of part performance done are referable to that agreement alone. *Price* v. *Salusbury.* vol. 32, p. 446

2. Possession given and payment of rent under one agreement cannot be considered as a part performance of that agreement as substantially varied subsequently. *Ibid.*

3. A written and signed agreement for a lease from the Defendant to the Plaintiff was entered into in *June*, and possession was given and rent paid. Afterwards it was discovered that there were errors as to the nature of the tenures and rentals of the property, and in *December* a fresh written and signed agreement was entered into. This was afterwards again varied by parol. A bill by the tenant for specific performance of the varied agreement was dismissed by the Master

of the Rolls, and on appeal, the Lords Justices disagreeing, the decree was affirmed. *Price* v. *Salusbury*. vol. 32, p. 446

4. The doctrine of part performance of a parol agreement is not to be extended by the Court, and it is inapplicable to a case where a trustee has a power to lease, at the request in writing of a married woman, which has not been made. *Phillips* v. *Edwards*. vol. 33, p. 440

5. Land was vested in a trustee for the separate use of Mrs. *E.*, a married woman, and the deed gave the trustee a power to lease at the request in writing of Mrs. *E.* The trustee and Mrs. *E.* agreed, by parol, to let the property to the Plaintiffs, and a lease was prepared, approved of and executed by the trustee and by Mrs. *E.*; but, before their solicitor had parted with it and before the Plaintiffs had executed it, Mrs. *E.* recalled her assent to it. She had made no request to the trustee "in writing." Held, that there was no contract binding on Mrs. *E.* and no part performance, and that the Plaintiffs could not enforce the agreement. *Ibid.*

6. A contract for the sale to the Plaintiff of lands of a company was entered into, without any specific authority, by their manager, and it was afterwards part performed by the delivery of possession and other acts of the company and its officers. Held, that it was binding on the company and that the Plaintiff was entitled to enforce its specific performance. *Wilson* v. *The West Hartlepool Harbour and Railway Company*. vol. 34, p. 187

7. A wife, unknown to her husband, requested her father to sell a field, to be paid for out of her savings. The father at first refused, but he received the money, and shortly afterward put the husband into possession. For ten years the money was retained by the father without payment of interest, and the field by the husband without payment of rent. The father then attempted to eject the husband, who, being made acquainted with the circumstances, insisted on retaining the field. Held, that the father was bound to convey it to the husband. *Millard* v. *Harvey*. vol. 34, p. 237

PARTIES.

[*See* ADMINISTRATION AD LITEM, JOINT LIABILITY, MISJOINDER, PARTIES (ABSENT), PARTIES (REPRESENTING, &c.), REVIVOR, SUING ON BEHALF.]

1. The bill stated that the Plaintiff, with the parol consent of the Defendant, a surety, had by deed released the principal debtor, and that having brought an action at law against the surety, it had been held, that the surety was released. The bill prayed payment by the surety of the debt. Held, on demurrer, that the principal debtor was a necessary party to the suit. *Brooks* v. *Stuart*. vol. 1, p. 512

2. It is the duty of a Plaintiff to come fully prepared at the hearing to ask the Court for a decree; and if he is not so prepared, and the suit appears defective from his default, it is then a matter of discretion or indulgence to grant him leave to supply the defect.

A cause came on, and was ordered to stand over for want of parties; it was brought on a second time, when the allegations and statements in the bill were found so defective, as to prevent the Court making a decree, and the suit was again defective for want of parties; the Court gave the Plaintiff leave to set the record right, but only on the terms of his paying the Defendants the costs of the former and of the present hearing. *Bierdermann* v. *Seymour*. vol. 1, p. 594

3. A person partially interested in an estate, may maintain a suit to set aside a conveyance of such interest fraudulently obtained from him, without making the other persons interested in the estate parties. *Henley* v. *Stone*. vol. 3, p. 355

4. It is a general rule, that a person having a claim on the assets of a testator, cannot in suing the executor make a debtor to the estate a party to the suit; but the rule admits of exceptions. *Lancaster* v. *Evors*. vol. 4, p. 158

5. Two houses, held under one lease, were sold in separate lots, and it was stipulated that the purchasers should be parties to each other's assignment. Held, that the purchaser of lot 2 was not a necessary party to a suit for specific performance against the purchaser of lot 1. *Paterson* v. *Long*. vol. 5, p. 186

6. A suit may be maintained for a breach of trust in respect of an ascertained fund, by a party entitled to a moiety thereof, without making the person entitled to the other moiety a party. *Pinkus* v. *Peters*. vol. 5, p. 253

7. *A.* covenanted with *B.* to transfer stock into the names of *C.* and *D.*, or some other person to be named by *A.*, upon trust for *B.*, his wife and issue. Afterwards *B.* became absolutely entitled to the fund. In a suit by *B.* against the representatives of *A.* to obtain satisfaction out of his estates in respect of the covenant: Held, that *C.* and *D.* were not necessary parties. *Watson* v. *Parker*. vol. 6, p. 283

8. Certain persons were properly made parties to a suit, previous to the orders of *August*, 1841, which made them no longer necessary parties. Held, that they might properly be dismissed at the subsequent hearing. *Tarbuck* v. *Grevnall*. vol. 6, p. 358

9. Upon a bill for a general account be-

tween *A.* and *B.*, a question arose as to three items, whether they ought to be charged against *A.* or against *C.*, with whom *A.* and *B.* had had some mutual dealings. Held, that *C.* was not a necessary party to the suit. *Tarbuck* v. *Greenall.* vol. 6, p. 358

10. Where a voluntary trust is perfected, the settlor is not a necessary party to a suit by the *cestui que trust* against the trustee, to compel its performance. *Reed* v. *O'Brien.* vol. 7, p. 32

11. An estate subject to a mortgage was devised to executors for a term for payment of debts, and subject thereto, to one for life, with remainder over. The executors joined in a transfer of the mortgage, and raised a further sum alleged to be necessary for payment of the debts. The tenant for life, with the concurrence of the executors, afterwards sold the property absolutely, and the purchaser paid off the mortgage. A bill being filed by the remainderman to redeem the purchaser, on payment of the original mortgage only, and the cause being set down on an objection for want of parties: Held, that the Plaintiff was not, at present, bound to make the executors parties. *Greenwood* v. *Rothwell.* vol. 7, p. 279

12. To a suit seeking to wind up the affairs of a club or partnership, all persons interested must be made parties, though they are numerous; it is not sufficient for one to sue on behalf of the others. *Richardson* v. *Hastings.* vol. 7, p. 301

13. By the rules of a club, the bankers were alone authorized to receive money on account of the club. Some of the members subscribed and purchased the furniture, which, by deed executed by the subscribers, was vested in the Plaintiff *A. B.*, in trust to repay the amounts subscribed, and to pay the surplus to the committee for the benefit of the club. The club becoming embarrassed, was afterwards dissolved, and the committee was authorized to wind up the affairs. Two of the committee *C.* and *D.*, sold the furniture, and alone received the produce, together with other general assets of the club. A bill was filed by *A. B.* on behalf, &c., against *C.* and *D.*, and *E.*, a nonsubscribing member, to recover the moneys in the hands of *C.* and *D.*, and praying that the furniture money might be paid to the Plaintiff, on the trusts of the deed, "or otherwise as the Court might direct," and that the general assets recovered might be paid to the bankers, or otherwise, &c. Held, that the bill was not defective for want of parties, and that neither the other parties to the deed, nor the other members of the club, were necessary parties. *Richardson* v. *Hastings.* vol. 7, p. 323

14. After bill filed, but before *subpœna* served, the Defendant assigned the subject-matter of the suit: Held, that the assignee was a necessary party, and that the Court would, if necessary, grant an injunction to restrain any further assignment. *Powell* v. *Wright.* vol. 7, p. 444

15. Scheduled creditors to a creditor's deed, who were not parties thereto, held not necessary parties to a suit by a subsequent incumbrancer, to have the moneys out of which it was intended to pay such creditors raised, the trustees being parties. *Ibid.*

16. A bill was filed for relief against a conveyance of a real estate, made fraudulently to defeat a sequestration of the Privy Council. Held, that a person alleged to have concurred in the fraud, and to whom an outstanding term had been assigned to attend the inheritance, was properly made a party to the suit. *Taylor* v. *Wyld.* vol. 8, p. 159

17. It is perfectly settled, as a general rule, that a pecuniary legatee is not a necessary or proper party to a bill for an account of the personal estate. It is the duty of the executors to protect the estate against improper demands. *The Marquis of Hertford* v. *The Count and Countess de Zichi.* vol. 9, p. 11

18. *A. B.*, being in embarrassed circumstances, conveyed property to trustees to sell and pay his creditors (parties thereto) in proportion. *A. B.* afterwards instituted a suit against one of such creditors for the purpose of taking the accounts of such creditors, and to cut down the estimated amount of his debt. The other creditors were served with copy bill. Held, that as the other creditors were bound by the proceedings, the suit was not imperfect for want of parties, and a decree was made, without prejudice to the right of the other creditors to any sum which the Plaintiff might recover on taking the accounts. *Clarke* v. *Tipping.* vol. 9, p. 284

19. The ultimate limitation of a legacy was to a party's "personal representatives or next of kin." Held, that both classes must be made parties to a suit affecting the fund. *Salmon* v. *Anderson.* vol. 9, p. 445

20. Trustees authorized to carry on a trade permitted it to be carried on by agents. Held, that the agents were not necessary parties to a bill for the administration of the estate. *Ling* v. *Colman.* vol 10, p. 370

21. A widow concurred in a breach of trust, but her interest in the testator's estate had been separated. Held, that she was not a necessary party to a suit by a *cestui que trust* not seeking to charge her interest; and that the trustees, seeking to charge her interest, must make their

equity effective by some proceeding of their own. *Ling* v. *Colman*.
vol. 10, p. 370

22. Where the question of parties depends on the determination of a question in the cause, the Court under the obsolete 39th General Order of *August*, 1841, reserved it until the hearing. *Lewis* v. *Baldwin*.
vol. 11, p. 363

23. *A. B.* mortgaged a leasehold property, and afterwards specifically bequeathed it to *A.* and *B.*, on certain trusts for *C.*, *D.*, and *E.* Held, that *C.*, *D.*, and *E.* were proper parties to a bill to foreclose. *Coles* v. *Forrest*. vol. 11, p. 552

24. Suit by surviving trustee to recover back trust funds wrongfully misappropriated by the Defendants. Held, that the *cestuis que trusts* were not necessary parties. *Horsley* v. *Fawcett*.
vol. 11, p. 565

25. The trustees of a dissenting chapel mortgaged it under their powers, and the deed contained a power of sale. The mortgagee conveyed it to *A. B.*, and in a suit by the trustees, insisting that *A. B.* was mortgagee and not a purchaser from the mortgagee, held that some of the subscribers were necessary parties. *Minn* v. *Stant*. vol. 12, p. 190

26. A Defendant objected to a suit for want of parties alleged to be interested under an instrument not proved. The objection was overruled, and a decree made reserving their rights. *Meddowcroft* v. *Campbell*. vol. 13, p. 184

27. A Defendant *A. B.* objected that *C. D.* was a necessary party. *A. B.*'s title in the suit being disallowed, the objection was also overruled. *Ibid.*

28. Demurrer for want of parties overruled, on the ground of the statements in the bill, as to the Plaintiff's ignorance of the changes which had taken place in the parties interested. *Zulueta* v. *Vinent*.
vol. 13, p. 215

29. Two classes of trustees had committed a breach of trust. Held, that the *cestuis que trusts* might proceed against the one class without making the other class parties. *M'Gachen* v. *Dew*.
vol. 15, p. 84

30. Bequest in trust to invest and pay the interest of a moiety to *A.*, and afterwards to her children, and the other moiety to *B.*, and afterwards to her children. The interest on a moiety of 1,000*l.* invested on mortgage was paid to *A.* for thirty years. On her death the mortgage was got in. Held, that *A.*'s children could maintain a suit for their moiety, without making *B.* and her children parties. *Hares* v. *Stringer*. vol. 15, p. 206

31. Since the 15 & 16 *Vict.* c. 86, the trustees of a mortgage represent the *cestuis que trusts* sufficiently to protect the mortgagor, but where the surviving trustees or the representatives of the trustees alone are parties, the Court requires the *cestuis que trust* to be also represented, in order to secure the due application of the trust property. *Stansfield* v. *Hobson*.
vol. 16, p. 189

32. Incumbrancer *pendente lite* held not an indispensable party to a suit to recover the fund. *Macleod* v. *Annesley*.
vol. 16, p. 600

33. Executors of a deceased tenant for life, Held, improperly made parties to a bill filed to determine the question of election. *Wintour* v. *Clifton*. vol. 21, p. 447

34. A mortgagor had executed a creditors' deed, but judgment creditors had not acceded to it. Held, that the trustees of the deed did not represent them under the 15 & 16 *Vict.* c. 86, s. 42, r. 9. *Knight* v. *Pocock*. vol. 24, p. 436

35. Trustees of a creditor deed held sufficiently to represent all the creditors in a suit to foreclose. *Morley* v. *Morley*.
vol. 25, p. 253

36. A surety who covenants for payment of the mortgage money is not a necessary party to a foreclosure suit, if he has paid nothing. *Gedye* v. *Matson*.
vol. 25, p. 310

37. An objection, that a corporation was not made a party, overruled, such corporation not having been, for a long series of years, kept up, by the appointment of the members necessary to compose it. *Daugars* v. *Rivas*. vol. 28, p. 233

38. The Plaintiffs sold and conveyed some land to a building society, retaining an equitable mortgage on it for the purchase-money. The land was divided and sold in lots to the members. Held, that the Plaintiffs could not maintain a suit against the purchasers of some of the lots to recover their debt, in the absence of the purchasers of the other lots. *Peto* v. *Hammond*. vol. 29, p. 91

39. In consequence of the failure and insolvency of a benefit society, there was no officer or board in existence who could be made parties to a suit by a creditor to obtain payment out of the company's property. The Plaintiff having made the trustees and one of each class of members parties: Held, that the suit was properly constituted. *Pare* v. *Clegg*.
vol. 29, p. 589

40. An executor, in his residuary account, stated that he had retained in trust the amount of *A. B.*'s legacy. He afterwards paid over the residue. Held, that the executor had constituted himself a trustee for *A. B.*, and that the legal personal representative of the testator was not a necessary party to a suit to recover the legacy against the assets of the executor. *Tyson* v. *Jackson*. vol. 30, p. 384

41. A decree for foreclosure or for sale cannot be made in the absence abroad of

a party entitled to one-third of the equity of redemption. The objection is not removed by the 15 & 16 *Vict.* c. 86. *Caddick* v. *Cook*. vol. 32, p. 70

42. As to the modern practice of making several of a numerous class represent the class both as Plaintiffs and Defendants. *Bromley* v. *Williams*. vol. 32, p. 177

43. Though the solicitor or agent of a trustee is not generally a proper party to suit to recover the trust funds, yet the case is different where he has received the trust moneys, and has intermeddled with the performance of the trust. *Hardy* v. *Caley*. vol. 33, p. 365

44. *A.* agreed to grant *B.* a lease, but before he had done so he mortgaged the property to *C.* with notice, who in no way contested *A.*'s right to the lease. Held, that *C.* was not a proper party to a suit for specific performance. *Long* v. *Bowring*. vol. 33, p. 585

45. A company held, under the circumstances, not a necessary party to a suit to impeach acts of its directors. *Gregory on behalf, &c.* v. *Patchett*. vol. 33, p. 595

46. A husband, by his bill, alleged that his wife, under the advice and assistance of the two trustees of the settlement, secreted and withheld moneys of the wife which ought to be paid over to him, the husband. The bill sought to recover those moneys. The trustees, who were made Defendants, demurred, and their demurrer was allowed. *Eaton* v *Bennett*. vol. 34, p. 196

PARTIES (ABSENT).

[*See* SERVICE OF DECREE, SUING ON BEHALF.]

1. A cause stood over for want of parties; one of such parties was brought before the Court, but another was out of the jurisdiction. Liberty was given to enter into evidence as to the former, and to prove the latter out of jurisdiction. *Willatts* v. *Busby*. vol. 3, p. 420

2. *A. B.* executed a voluntary settlement of real estate in favour of his wife and children, and afterwards contracted to sell it for valuable consideration. The purchaser filed a bill for specific performance against the vendor, his wife, children, and the trustees in whom the legal estate was vested. One of the children was out of the jurisdiction, and did not appear. The Court decreed a specific performance, and ordered the trustees to convey to the purchaser, saving the rights of the absent party. *Willatts* v. *Busby*. vol. 5, p. 193

3. A decree made in the absence of a material party, but without prejudice to his rights and interests. *Ibid.*

4. Under a decree in an administration suit, certain parties only were allowed to attend before the Master. The Master approved of some suits being instituted by the receiver, who was to be indemnified out of the estate. The funds appearing by affidavit to be "abundantly ample," the Court ordered the institution of the suits, and the payment of costs out of the fund standing to the general credit of the cause, upon service on those only whom the Master had authorized to attend him on the reference. *Lockhart* v. *Hardy*. vol. 6, p. 267

5. Observations on what is termed the "substantial representation," in a suit of absent parties, and how far such absent parties are bound. *Powell* v. *Wright*. vol. 7, p. 444

6. An adverse decree, made in the absence of some of a class, the point not being considered to be one of difficulty. *Bennett* v. *Foster*. vol. 7, p. 540

7. Where a fund stands to the general credit of a cause, it will not be paid out in the absence of the legal personal representatives. But if, after decree and where the fund is clear, the executor dies, a supplemental bill is not always necessary, for the fund may be distributed on petition, upon the appearance of the new personal representatives. *Parsons* v. *Groome*. vol. 12, p. 180

8. In a case where the parties were very numerous and the expenses of attending taking the accounts very great, an application, after decree, to exclude a number of parties interested in the residue from attending the taking such accounts and the further proceedings, except at their own expense, was refused. *Day* v. *Croft*. vol. 14, p. 29

9. A testator gave the interest of his residue to *W.* and his wife, with remainder to the testator's grandchildren. *W.* died twenty-nine years after the testator, and his wife applied for the income. The Court, being unable to decide on her right in consequence of the absence of some parties, allowed her in the meanwhile to receive a portion of the income, on her undertaking to refund if necessary. *Moffat* v. *Birnie*. vol. 16, p. 298

10. Some only, of many commissioners, appointed under an Act to raise money on the rates, for parish purposes, were made Defendants to a suit by a bondholder to enforce payment. It was objected that all the commissioners ought to be parties. The objection was removed, by the Court ordering the decree to be served on the absent commissioners, with notice that they might attend the taking of the accounts. *Fletcher* v. *Gibbon*. vol. 23, p. 212

PARTIES INTERVENING.

A decree having been made for the administration of an estate, another suit was afterwards instituted against the executrix to establish an adverse claim against a portion of the assets. The executrix being abroad, and neglecting to defend the second suit, it was about to be taken *pro confesso*. The Court gave leave to the Plaintiff in the administration suit to intervene and defend the second suit on behalf of the estate, upon payment of costs and giving an indemnity. *Olding* v. *Poulter*. vol. 23, p. 143

PARTIES REPRESENTING ESTATE OF DECEASED PERSONS.

[*See* ADMINISTRATION AD LITEM, PARTIES (ABSENT).]

1. *A.* being entitled to a legacy of 5,000*l.*, the executor and residuary legatee misrepresented the amount to be 4,000*l.*, and for this sum the residuary legatee gave his bond to *A.* The executor having paid all the debts and other legacies, handed over all that remained to the residuary legatee, and which was more than sufficient to satisfy the Plaintiff's demand. Held, that a bill might be sustained by *A.* against the residuary legatee and the representatives of the executor for recovering the extra 1,000*l.* and interest, without making the representatives of the testator a party. *Beasley* v. *Kenyon*. vol. 3, p. 544
2. A clear ascertained fund was remitted from abroad by an executor to a person in *England*, to distribute between the legatees. The Court determined the rights of the legatees, without having a legal personal representative before the Court, the consignee being a party to the suit. *Arthur* v. *Hughes*. vol. 4, p. 506
3. The ultimate limitation in a marriage settlement of a fund belonging to the husband was "for the next of kin or personal representatives of the husband, in a due course of administration, according to the Statute of Distributions." The husband left his wife surviving, and *A. B.*, his next of kin, was a *feme covert*. In another suit, the fund had been treated as part of the residuary estate of the husband, and had been ordered to be paid over to two charities, who were residuary legatees. A bill being filed by the representatives of *A. B.*, the next of kin, claiming the fund. Held, that the next of kin of the wife of the settlor and the charities were necessary parties, but that the representatives of the deceased husband of *A. B.*, who had administered to his wife, were not necessary parties to the suit. *Kilner* v. *Leech*. vol. 7, p. 202
4. Husband and wife sued, amongst other things, for an account of the rents of her copyhold estate. The wife died. Held, on demurrer, that it was not necessary to make her personal representative a party to a bill to revive the suit. *Jones* v. *Skipworth*. vol. 9, p. 237
5. A fund was alleged to have been carried in an administration suit, "to a separate account, intituled the general account." In another suit, to give effect to the assignment of a share of the fund, Held, that the legal personal representative of the testator was a necessary party. *Salmon* v. *Anderson*. vol. 9, p. 445
6. To a suit by a creditor of an intestate, against an administrator *de son tort*, for an account and payment, it is necessary that a legal personal representative duly constituted should be a party. *Creasor* v. *Robinson*. vol. 14, p. 589
7. A Defendant died, and a contest as to one of his testamentary papers prevented probate being granted. The Court, on motion, appointed the executor named in his will to represent the deceased's estate in the cause, under the 15 & 16 *Vict.* c. 86, s. 44. *Hele* v. *Lord Bexley*. vol. 15, p. 340
8. In a suit for administration against the administrator, with the will annexed, and the widow, to whom the assets had been assigned, such administrator was alleged and proved to be out of the jurisdiction. Held, that the suit could not proceed in the absence of a legal personal representative. *Donald* v. *Bather*. vol. 16, p. 26
9. The person who would be appointed administrator *ad litem*, is the most proper person to be nominated under the 15 & 16 *Vict.* c. 86, s. 44, to represent a deceased party who has no personal representatives. *Dean of Ely* v. *Gayford*. vol. 16, p. 561
10. This enactment extends even to those cases where the party "interested" is sought to be made liable. *Ibid.*
11. The question was between the children who survived and those who predeceased their parents. There had been two of the latter, but neither of their estates were represented in the suit. It was asked under the 15 & 16 *Vict.* c. 86, s. 44, that the surviving husband of one might represent the interests of the absent parties. The application was refused. *Gibson* v. *Wills*. vol. 21, p. 620
12. Where the entire adverse interest is unrepresented by any party to the suit, the Court will not appoint a person to represent that interest, under 15 & 16 *Vict.* c. 86, s. 44. *Ibid.*
13. A person cannot be appointed to represent an estate under the 15 & 16 *Vict.* c. 86, s. 44, without his consent. *The Prince of Wales, &c. Association Company* v. *Palmer*. vol. 25, p. 605

14. The Court cannot, under the 15 & 16 *Vict.* c. 86, s. 44, appoint a person to represent the estate of a deceased person who is not willing to act. *Hill* v. *Bonner.* vol. 26, p. 372

15. A bill was filed against the Scotch executors of a domiciled Scotchman, to set aside a sale to their testator of shares in a Scotch company, and to make them account for the dividends received by the testator thereon. Held, on demurrer, that the suit could not proceed in the absence of a legal personal representative of the testator, duly constituted in *England.* Held also, that the objection could not be removed by appointing a person to represent the estate under the 15 & 16 *Vict.* c. 86, s. 44. *Maclean* v. *Dawson.* (No. 1.) vol. 27, p. 21

16. At the hearing a cause was ordered to stand over for want of parties, and the Plaintiff was to amend his bill by adding the names of such parties or their legal personal representative; one of them was dead and had no legal personal representative. A motion by the Plaintiff for liberty to proceed in the absence of such representative, or for the appointment of a person to represent his estate, was refused with costs. *Williams* v. *Page* (No. 3.) vol. 27, p. 373

17. Pending the taking of partnership accounts under a decree, one of the partners died. His will, by which he gave his estate to his widow and appointed her sole executrix, was in litigation in the Probate Court. This Court declined, under the 15 & 16 *Vict.* c. 86, s. 44, to appoint the widow to represent the estate in the suit, pending the litigation. *Rowland* v. *Evans.* (No. 2.) vol. 33, p. 202

PARTITION.

1. In a partition suit, costs, as at law, are not given on either side at the hearing; but where a Defendant set up an agreement in bar of the right of the Plaintiff to a partition, he was directed to pay so much of the costs as were occasioned by that part of the defence. *Morris* v. *Timmins.* vol. 1, p. 411

2. A road was set out by two tenants in common of property, for the convenience of their respective dwelling-houses for ever; the Court, in a partition suit, though of opinion that it ought not to be interfered with, declined giving any special direction on the subject to the commissioners. *Ibid.*

3. Four persons purchased some land and agreed that it should be laid out in streets and sold in lots according to a specified plan. All the parties died, and there being no equitable ground for putting an end to the agreement,—Held, that the representatives of one of the parties could not maintain a suit for a petition against the representatives of the others. *Peck* v. *Cardwell.* vol. 2, p. 137

4. A party having a life estate determinable on his marriage, in one-fifth of an estate, is entitled to a decree for partition. *Hobson* v. *Sherwood.* vol. 4, p. 184

5. Where, in a suit for partition, the Defendants are desirous that there shall be no partition of their several shares, the partition may be confined to the *aliquot* share of the Plaintiff. *Ibid.*

6. Independently of the 4 & 5 *Vict.* c. 35, s. 85, this Court has no jurisdiction to direct the partition of copyholds, nor of customary freeholds. *Jope* v. *Morshead.* vol. 6, p. 213

7. On a bill for a partition, when there is a small failure in proof of title, or when the shares of the parties are alone doubtful, the Court will grant an inquiry: but where there is a material omission in the proof of the Plaintiff's title, the bill will be dismissed with costs. This course was pursued, though the Plaintiff had recovered in ejectment a portion of the estate from the Defendant, it not appearing what were the circumstances of that proceeding, or whether the Plaintiff's title, as alleged, was therein proved. *Ibid.*

8. On a suit previous to the 4 & 5 *Vict.* c. 35, s. 85, for a partition of freeholds and copyholds, the Court directed the copyholds to be allotted in entirety to one of the parties. *Dillon* v. *Coppin.* vol. 6, p. 217, n.

9. The partition of a manor may be compelled in equity. *Hanbury* v. *Hussey.* vol. 14, p. 152

10. One of two tenants in common of an estate agreed to grant a lease of the mines under it. Held, that the lessee was entitled to a decree for specific performance and for a partition of the estate. *Heaton* v. *Dearden.* vol. 16, p. 147

11. A power to trustees "to sell and dispose of" the testator's real estate and to give receipts, does not authorize a partition. *Brassey* v. *Chalmers.* vol. 16, p. 223

12. A partition will not be set aside on light grounds, or for light matters, or for mere inequality of value of the allotments, if, in making it, the commissioners have honestly exercised their own judgment. *Peers* v. *Needham.* vol. 19, p. 316

13. It is not necessary, that, in making a partition, an aliquot share of each species of property, or of each house (if it be house property), should be allotted to each of the tenants in common. *Ibid.*

14. But where under a decree for partition amongst three tenants in common, which did not empower the commissioner to order *owelty* of partition, the commissioners, upon some previous understand-

ing that two of the tenants in common were willing to take one of the two houses comprising the property, without severance, allotted that house to them, and the other to the third tenant in common, the return was suppressed. *Peers* v. *Needham.* vol. 19, p. 316

15. In a suit for partition, the Plaintiff claimed as heir of a deceased tenant in common. The Defendant ignored the Plaintiff's title as heir, and, at the original hearing, an inquiry as to the fact was directed, which was found in favour of the Plaintiff. Held, that the Defendant was not liable to pay the costs of the inquiry, except so far as they might have been increased by independent evidence adduced by the Defendant, in opposition to the Plaintiff's title. *Lyne* v. *Lyne.* vol. 21, p. 318

16. The Court can make a partition of an advowson. *Johnston* v. *Baber.* vol. 22, p. 562

17. A partition by parol and separate possession cannot be questioned after being acted on for more than twenty years. *Paine* v. *Ryder.* vol. 24, p. 151

18. Upon a partition, the shares of the parties were very minute and complicated. The Court, to save expense, and instead of directing a conveyance of the several shares, declared each of the parties trustees as to the shares allotted to the others of them, and then vested the whole trust estate in a single new trustee, under the Trustee Acts, with directions to convey to the several parties their allotted shares. *Shepherd* v. *Churchill.* vol. 25, p. 21

19. Covenant by *A.* to bequeath to *B.*, by will, "one full fourth part of the real and personal estate whatsoever of or to which *A.*" should, at the time of his death, be entitled, and in default, that his heirs and executors should, immediately after his death, convey "one full fourth part" of it. Held, upon the context, to mean one-fourth in value, and not one undivided fourth of every item of property in specie. *Bell* v. *Clarke.* vol. 25, p. 437

20. A partition decreed without a commission, in a case in which infants were interested, upon satisfactory evidence of the value. *Greenwood* v. *Percy.* vol. 26, p. 572

21. Many persons being interested in a partition deed, it was directed to be enrolled, with liberty to any party to have a duplicate at his own expense. *Elton* v. *Elton.* (No. 1.) vol. 27, p. 632

22. Where the parties are equally interested, the practice is to give the custody of the deeds to the Plaintiff, but where they are not, then they are usually given to the person having the greatest interest. *Ibid.*

23. Subsequent costs, in a partition suit, ordered to be borne by the parties according to the value of their respective shares. *Elton* v. *Elton* (No. 1.) vol. 27, p. 632

24. An infant being entitled to one-ninth of a real estate, and it being for her benefit, the Court, instead of directing a partition, declared the costs a charge on the infant's share, and ordered a sale of the whole estate. *Davis* v. *Turvey.* vol. 32, p. 554

25. A sale was directed in a partition suit of a freehold estate in which a married woman was interested for her separate use without power of anticipation; the Court having first made her costs a charge on her share, and directed them to be raised by a sale. *Fleming* v. *Armstrong.* vol. 34, p. 109

26. In a suit for partition of property in which an infant was interested, the estate was sold. Held, that the costs subsequent to the first decree ought to be borne by the aggregate amount of the purchase-moneys. *Coventry* v. *Coventry.* vol. 34, p. 572

PARTNERSHIP.

[*See* APPORTIONMENT, BANKER, COST-BOOK SYSTEM, GOODWILL, OPTION, PARTNERSHIP ACCOUNTS, PARTNERSHIP (DISSOLUTION), PARTNERSHIP (LIABILITY OF CO-PARTNER), PARTNERSHIP (WINDING-UP), ULTRA VIRES.]

1. *W. D.* assigned an exclusive trading privilege to a trustee for a company in consideration of receiving one-fifth of the clear profits. The directors were to have the exclusive management of the affairs of the company. Held that *W. D.* was not a necessary party to a suit respecting the dealings between the directors and a third party. *Benson* v. *Hadfield.* vol. 5, p. 546

2. Difficulty in holding a partner, who ostensibly takes an active part in the conduct of the business, free from responsibility, on the ground of insanity, in respect of the acts of the firm. *Sadler* v. *Lee.* vol. 6, p. 324

3. Difficulties in appointing a receiver of a partnership upon motion. *Madgwick* v. *Wimble.* vol. 6, p. 495

4. Surviving partners insisted on continuing the partnership with the assets of a deceased partner. The Court thought the representatives of the latter entitled to a receiver. *Ibid.*

5. *A.* and *B.* purchased realty out of their partnership assets, which was used for their partnership purposes, and was in equity to be considered as personalty. A new partnership was formed between *A.*, *B.* and *C.* The realty was continued to be used for the partnership purposes,

but *A.* and *B.* stipulated for a rent to be paid them by the new partnership, composed of *A.*, *B.* and *C.* *A.* died. Held, the property was, in equity, to be considered as part of his real estate. *Rowley* v. *Adams.* vol. 7, p. 548

6. Agreement for a partnership decreed to be specifically performed by the execution of a proper partnership deed. *England* v. *Curling.* vol. 8, p. 129

7. Injunction granted to restrain a partner, during the partnership term, from carrying on business with other persons in the name of the old firm, and from publishing notices of dissolution. *Ibid.*

8. There is no such principle in Equity that surviving partners cannot become purchasers from the representatives of the share of a deceased partner. *Chambers* v. *Howell.* vol. 11, p. 6

9. A partner having excluded his co-partner, an injunction was granted to restrain him from obstructing or interfering with his co-partner in the exercise and enjoyment of his rights under the partnership articles. *Hall* v. *Hall.* vol. 12, p. 414

10. A sum being, on taxation, found due from a solicitor to his client, the first order fixing a day for payment must be obtained on notice; but the second or four day order is made *ex parte*. *In re Stevenson.* vol. 14, p. 27

11. Upon the dissolution of a partnership, a deed was executed, whereby the retiring partner assigned the debts to the continuing partners, giving them an irrevocable power of attorney to receive them, and covenanting not to interfere in their collection. The surviving partners continued their dealings with one of the debtors to the old firm, and, without the sanction of the retiring partner, took a security in their own name for the aggregate amount of the old and new debt. Held, that they thereupon made themselves personally responsible to the retiring partner for his share of the debt. Held, also, that they would have been equally liable as partners, independently of the deed. *Lees* v. *Laforest.* vol. 14, p. 260

12. A bill of exchange received by a partner in a solicitor's firm from a client is, *primâ facie*, to be deemed to be received on behalf of the firm; and if the solicitors allege the contrary, they are bound to prove it by clear evidence. *Moore* v. *Smith.* vol. 14, p. 393

13. Exclusion is a sufficient ground for appointing a Receiver in partnership cases; but partners may, by contract, provide for an exclusion, on the happening of certain events. *Blakeney* v. *Dufaur.* vol. 15, p. 40

14. Upon a motion for a Receiver of a partnership, the Court will not determine the questions arising between the partners, the only object then being to protect the assets until the determination of the rights. *Blakeney* v. *Dufaur.* vol. 15, p. 40

15. In 1819 a person entitled to a share in a coal mining company became bankrupt. Dividends were declared in 1831, 1838, and subsequently. The bankrupt's shares were carried over to a separate account in the company's books down to 1850, but no claim was made by the assignees until that year. Held, that the right of the assignees to these dividends still subsisted, but that they were not entitled to any profits made by their retainer. *Penny* v. *Pickwick.* vol. 16, p. 246

16. Surviving partners held, by inference deduced from their conduct, to have carried on their business on the same terms as the original partners. *King* v. *Chuck.* vol. 17, p. 325

17. Where two solicitors, who are not then in partnership, are employed in the same matter for a client, as in the defence of an action, the *primâ facie* inference of law is, that they are partners as to that particular matter, and are entitled to an equal share of the joint profits, irrespective of the quantity of work performed by each. *Robinson* v. *Anderson.* vol. 20, p. 98

18. Two persons seised of freeholds agreed to carry on business in partnership upon the premises for fourteen years, and that if either died during that term, the survivor should purchase the freeholds at a stated price. The fourteen years having expired, they, by parol agreement, continued the partnership "on the old terms." One afterwards died intestate. Held, that the stipulation as to purchase was binding, and that the freeholds were converted into personal estate, and did not pass to the heir. *Essex* v. *Essex.* vol. 20, p. 442

19. Persons may be partners towards the world without being partners between themselves; but if they be partners between themselves, they are undoubtedly partners in respect of the public. *Re Stanton Iron Company.* vol. 21, p. 164

20. Where one of several partners agrees with a stranger for a sub-partnership, it is not to be implied, in the absence of any agreement, that the duration of the sub-partnership is to be co-extensive with the original partnership. *Frost* v. *Moulton.* vol. 21, p. 596

21. If two partners take in a third partner, without specifying the terms on which he becomes such partner, he has the same rights and is subject to the same liabilities as the two original partners; the terms and conditions of the partnership which bind them bind him, unless a new

contract be made between them. And so also, if the conditions of his becoming partner are partially set forth, then to the extent that they are not specified and involved by necessary inference therein, he will be bound by the terms of the partnership contract affecting the two original partners with whom he associates himself. *Austen* v. *Boys*. vol. 24, p. 598

22. Proprietors of a newspaper dissolved partnership, and one of them agreed to purchase the whole. Before the completion and pending a suit for specific performance, the purchaser published statements as to the profits and loss of the paper, in order to establish a company to carry it on. A motion for an injunction to restrain him was refused. *Marshall* v. *Watson*. vol. 25, p. 501

23. *A.* and *B.* entered into a partnership for seven years: the business was carried on by and in the name of *A.* alone, *B.* being a mere sleeping partner. *A.* continued the business, after the expiration of the term, on the same premises. Held, that *B.* was entitled to a share of the subsequent profits. *Parsons* v. *Hayward*. vol. 31, p. 199

24. Where partners, after the expiration of the term agreed upon by the articles of co-partnership, continue to carry on the business at will, without change, this partnership is regulated by the articles, so far as they are applicable to the new state of circumstances, but such of the articles as are inconsistent with a partnership at will have no application. *Clark* v. *Leach*. vol. 32, p. 14

25. When articles of partnership are clear and distinct, then partners are bound by them; when they are ambiguous or silent, the course of dealing between the partners regulates the mode by which this Court must deal with them, and in some cases the Court has allowed the constant usage of partners to supersede the articles. *Coventry* v. *Barclay*. vol. 33, p. 1

26. A testator, in 1841, bequeathed 200 guineas to such of the representatives as might be alive at his death of Messrs. *P.* and *H.*, then both dead, with whom, in 1793, he had had some business, by which they were losers to the amount of about 200 guineas. Held, that the legal personal representatives of *P.* and *H.*, and not the partners in the firm at the death of the testator, were entitled; and secondly, that such representatives took in equal moieties, and not in the proportion of their shares in the partnership. *Leak* v. *Macdowall*. (No. 2.) vol. 33, p. 238

27. A partnership between father and son, though admitted to exist as regards the world, held, under the circumstances, not to exist as between themselves. *Radcliffe* v. *Rushworth*. vol. 33, p. 484

28. The Plaintiff and Defendant were partners, they were joint owners with *Baines* of some ships, as to which *Baines* acted as ship's husband, but the duties were principally performed for him by the Defendant. There being no agreement on the subject between the parties, it was held, that *Baines* was entitled to the profits derived as ship's husband, and that the Plaintiff was not, as partner, entitled to participate in any share of them received by the Defendant, by arrangement with *Baines*. *Miller* v. *Mackay*. (No. 2.) vol. 34, p. 295

PARTNERSHIP ACCOUNTS.

[*See* ACCOUNTS.]

1. The Court refused to open accounts, though of a general and summary nature, not containing the items, and which had been rendered by a surviving partner to the representatives of a deceased partner, and had remained unquestioned for twenty-two years, but it decreed an account limited to the subsequent receipts of the surviving partner, which it was admitted had taken place. *Scott* v. *Milne*. vol. 5, p. 215

2. Although the correct and accurate value of a share of one of the partners in a joint concern cannot be ascertained without converting the property of the concern into money, ascertaining the surplus (if any), after satisfying all demands of other persons, and after taking the account between the concern and each partner, and finding the balance due to or from each partner severally; yet it is lawful for partners to deal with each other in quite a different way. If they think proper, they may lawfully rely on the stock-takings, valuations, and accounts which appear by the books, and the accounts kept in the manner known to or acquiesced in by the part-transaction aside. And where the partnership business was carried on in *Van Diemen's Land*, and none of the partners could have personal knowledge of the transactions, but they were obliged to rely on the reports of agents, it was held that they might fairly and honestly deal with each other with respect to their shares, notwithstanding the ignorance in which they all were as to their exact value. *Knight* v. *Marjoribanks*. vol. 11, p. 322

3. Classification of the three cases, in which the estate of a deceased partner is entitled to participate in the subsequent profits of a trade, in which his capital has been employed. *Wedderburn* v. *Wedderburn*, (No. 4.) vol. 22, p. 84

4. The defendant agreed to pay 1,000*l.* for a share in a partnership for fourteen

years. The partners disagreed, and the partnership was dissolved by the Court, with the assent of both the partners. There being faults on both sides, the Court directed a due proportion of the premium to be returned. *Astle* v. *Wright.* vol. 23, p. 77

5. In 1851 *A.*, *B.* and *C.* agreed to be partners for five years. Six months afterwards, *A.* being in difficulties, it was agreed between *A.*, his creditors and *B.* and *C.*, that *A.* should retire, and *B.* carry on the business for his own behoof, and that of *A.*'s creditors for the period of five years, as agreed on by the articles. 2nd. That *A.* should assign to trustees his separate estate for the benefit of his creditors, and *B.* agreed to appropriate to the said trustees the share of profits in his business that would have accrued to *A.* in the event of the partnership having been continued, less 400*l.* a year to be appropriated to *A.*'s maintenance. *A.* died two months after. Held, that the right of his creditors to a share in the profits thereupon ceased. *Crosbie* v. *Guion.* vol. 23, p. 518

6. *A.* and *B.* were tenants from year to year of a mine, which they worked in partnership. *A.* died in 1847. *B.* continued to work the mine, and repudiated all claims of *A.*'s executrix to share in the profits, and she took no proceedings to enforce them, and in no way contributed to the expense of working the mine. The landlord gave *B.* notice to quit, and *B.* then entered into new arrangements. *B.* continued the working, and died in 1853. The Master of the Rolls held, in a suit instituted more than six years from *A.*'s death, that his estate was entitled to no portion of the profits except that attributable to the employment of his share of the plant. Lord *Cranworth* and Lord Justice *Turner* were of a different opinion, but the Lord Justice *Knight Bruce* was inclined to concur with the Master of the Rolls. *Clements* v. *Hall.* vol. 24, p. 333

7. A ship was purchased by a partner for himself, but was paid for out of the partnership assets. The firm became bankrupt. Held, that the firm had no interest in the ship, or any lien on it for the amount of the purchase-money. *Walton* v. *Butler.* vol. 29, p. 428

8. A partnership for fourteen years was dissolved before the end of two years. The Court, under the circumstances, refused to direct the repayment of any portion of the premium paid for a share in the business. *Airey* v. *Borham.* vol. 29, p. 620

9. *A.* and *B.* entered into partnership, and during the partnership, were entitled to the capital stock in equal moieties. The partnership deed provided, that if B. died first, his estate was to receive from *A.* his one-half share in the business, but it made no corresponding provision for the event (which happened) of *A.*'s dying first. Held, nevertheless, that the representatives of *A.* (who died first) were entitled to half the capital stock. *Nelson* v. *Bealby.* vol. 30, p. 472

10. *A.* and *B.* carried on the business of chemists upon leasehold premises belonging to *A.* By the partnership articles, upon *A.*'s retirement *B.* was to have the right of purchasing the premises at a valuation. Held, that the premises were to be valued irrespective of the advantages to be derived from the fact, that the business of chemist had been carried on there for thirty years. *Burfield* v. *Rouch.* vol. 30, p. 241

11. The Plaintiff and Defendant became partners for ten years, the Plaintiff paying the Defendant a premium of 1,000*l.* A quarrel occurred at the end of eight years, in which both parties were held to be in the wrong, and a dissolution took place. Held, that the Plaintiff was entitled to a return of 200*l.* of the premium. *Pease* v. *Hewitt.* vol. 30, p. 22

12. By a partnership deed, interest at 5*l.* per cent. was payable on the partners' capital, and it was provided, that, on death or retirement of a partner, the clear balance ascertained at the last stock taking should be repaid, with interest at 5*l.* per cent., by certain instalments. But upon the death of a partner the last stock-taking was to be conclusive "as to the share and amount of interest of the deceased partner in the business, and should be the sum to be paid to his executors," with interest from the last stock-taking in lieu of profits from that time. Held, that the estate of a deceased partner was entitled not only to 5*l.* per cent. for interest but also to 5*l.* per cent. for profits. *Browning* v. *Browning.* vol. 31, p. 316

13. By partnership articles, "the clear balance, as ascertained from the last stock-taking" of a deceased partner, together with any additional capital (if any), was to be paid to his executors by instalments, and the last stock-taking was to be "conclusive as to the share or amount of interest of the deceased partner in the business, and was to be the sum to be paid to his executors. Held, that as the additional capital was to be taken into account, so, impliedly, capital drawn out in the interval between the last stock-taking and the death of a partner must be deducted. *Ibid.*

14. The profits of the offices of clerkship to poor-law guardians, superintendent registrar of births, &c., treasurer of turnpike trust, stewardship of a manor, treasurership of a charity and receivership

of tithes at a fixed salary, held to form part of a partnership between solicitors. *Collins* v. *Jackson.* vol. 31, p. 645

15. As to the proper mode, in the absence of any agreement expressed or implied, of taking the partnership accounts of bankers, as between a surviving partner and the estate of the deceased partner. *Bate* v. *Robins.* vol. 32, p. 73

16. By a partnership deed, annual rests were to be made, and entered in a book and signed, and which were to be binding and conclusive on the partners, and in case of the death of a partner, the survivors had a right to take his share at the valuation appearing by the last annual rest. The rest was made in *July*, 1860, in the absence of *H. B.* (one of the partners), in which, according to the usual custom, the plant, &c. was taken at an arbitrary sum without any distinct valuation. A copy was furnished to *H. B.*, who expressed no disapprobation. The book was signed by all the partners except *H. B.*, and he died two months afterwards. Held, that the rest was binding on him and his executors, and the latter could not require an actual valuation to be made of the partnership property. *Coventry* v. *Barclay.* vol. 33, p. 1

17. Under the common decree in a partnership suit, interest is payable, on the balance found due from one partner to another, from the date of the certificate. *Bonville* v. *Bonville.* vol. 35, p. 129

PARTNERSHIP (DISSOLUTION).

1. Where a partner does acts inconsistent with the duty of a partner, and of a nature to destroy the mutual confidence which ought to subsist between partners, and makes it impossible that the business can be conducted in partnership with benefit to either party, the Court will decree a dissolution before the expiration of the term for which the partnership was entered into. *Smith* v. *Jeyes.* vol. 4, p. 503

2. Confirmed and incurable insanity is a ground for dissolving a partnership, but a mere diminution of capacity in attending to it is insufficient for that purpose. *Sadler* v. *Lee.* vol. 6, p. 324

3. *A.*, *B.* and *C.* agreed to enter into a joint speculation in tea. One consignment only was made by *A.* to *B.*, which was paid for by *C.* Disagreements arose respecting it, *B.* and *C.* insisting that it was a spurious article, and repudiating the consignment. Held, that the partnership relations were not put an end to by the repudiation; that the rights, obligations, and liabilities of the parties could not be settled by any simple litigation at law between any two, and that the matter formed the proper subject of a suit in equity. *Cruikshank* v. *M'Vicar.* vol. 8, p. 106

4. By articles of partnership, it was stipulated that, in the event of such severe illness as should oblige the Defendant to quit *India* for more than one year, the books should be made up to the end of the partnership year, and a valuation should be made of the stock. The Defendant became an incurable lunatic on his way to *India*. He arrived there in 1841, and was sent back. Held, that this article contemplated a dissolution; that, according to the fair meaning of the article, the event had happened, and that his partners were entitled to a dissolution as from the end of the partnership year 1842, and not, as contended by the Defendants, from the decree. *Bagshaw* v. *Parker.* vol. 10, p. 532

5. In a decree for the dissolution of a partnership, a Defendant was ordered to concur in procuring the insertion of notice of dissolution in the *London* Gazette. *Troughton* v. *Hunter.* vol. 18, p. 470

6. This Court will dissolve a partnership before the expiration of the term, where the circumstances have so changed, and the conduct of the parties is such, as to render it impossible to carry it on without injury to all the partners. *Harrison* v. *Tennant.* vol. 21, p. 482

7. This Court will not dissolve a partnership on the ground of a small infraction of the articles of co-partnership. *Anderson* v. *Anderson.* vol. 25, p. 190

8. A person selling a share in his business and becoming a partner with the purchaser, for an indefinite period, would not, in equity, be permitted to dissolve the partnership immediately afterwards, and retain the premium. *Featherstonhaugh* v. *Turner.* vol. 25, p. 382

9. Several persons who were jointly entitled to several leases of a colliery, worked it in copartnership. Held, on a dissolution, that one of the co-owners of the leases could not insist on a partition, though there might be no debts, but that the whole must be sold. *Wild* v. *Milne.* vol. 26, p. 504

10. A notice of dissolution given to a lunatic partner is sufficient to put an end to the partnership. *Mellersh* v. *Keen.* vol. 27, p. 236

11. Notice by two partners to a third that "we shall dissolve the partnership" on the 31st of *December*, operates as a dissolution on that day. *Ibid.*

12. Partnership dissolved, on the ground that the ill-feeling between the partners rendered it impossible that the business could be successfully or beneficially conducted. *Watney* v. *Wells.* vol. 30, p. 56

13. A partnership between two solicitors

for their joint lives may be dissolved *instanter*, if one of the parties fraudulently sells out trust funds and applies the produce to his own use. *Essell* v. *Hayward*. vol. 30, p. 158

14. Several persons, having obtained a mining lease for sixty years, entered into partnership in "the business of iron ore workers" for that period. The business consisted of winning and selling *hematite* iron in an unmanufactured state. One of them having become lunatic, the Court dissolved the partnership and directed the whole concern to be sold by an indifferent person, with liberty to the parties to bid. *Rowlands* v. *Evans*; *Williams* v. *Rowlands*. vol. 30, p. 302

15. A partnership at will held dissolved as from the date of the filing of a bill which prayed for its dissolution. *Shepherd* v. *Allen*. vol. 33, p. 577

16. A partnership for ten years dissolved by decree of the Court at the end of three years, the relations between the partners being such that it could not be continued with advantage to either party. *Leary* v. *Shout*. vol. 33, p. 582

17. By partnership articles, one of three partners might "determine the co-partnership by giving six calendar months' notice:" and in that case, immediately after the expiration of the six calendar months, the assets were to be valued, and after the valuation being made and the result communicated, the partnership "shall, in regard to all the said partners, cease and determine. Held, that the partnership was dissolved at the expiration of the six months, and not from the completion of the valuation, though it continued after the six months, for the purpose of winding it up. *Griffiths* v. *Bracewell*; *Bracewell* v. *Griffiths*. vol. 35, p. 43

18. *A. B.* having been rendered incapable of performing his partnership duties, his partner filed a bill against him for a dissolution. Afterwards and before the hearing, *A. B.*'s health improved. Held, that there was not sufficient ground for dissolving the partnership, and all proceedings were stayed, with liberty to apply. *Whitwell* v. *Arthur*. vol. 35, p. 140

19. By articles of partnership for a term between *A.* and *B.*, all bills were to be signed by *A.* only. *B.* drew a bill on a customer for the amount of his bill. Held, that this was not a substantial violation of the articles. *Cheesman* v. *Price*; *Price* v. *Cheesman*. vol. 35, p. 142

20. The failure of one partner to enter in his accounts partnership moneys received by him is, of itself and independent of any provisions in the articles of partnership, a sufficient ground for the other partner dissolving. *Cheesman* v. *Price*; *Price* v. *Cheesman*. vol. 35, p. 142

21. By articles of a partnership for a term, each partner was to keep proper books of account and to enter all his receipts, and in default the other might dissolve the partnership. One partner had made small omissions in seventeen instances, which, in the aggregate, amounted to 9*l.* 10*s.* Held, that this justified the other in dissolving the partnership. *Ibid.*

PARTNERSHIP (LIABILITY OF CO-PARTNERS).

[*See* CO-TRUSTEES' LIABILITY.]

1. *A.*, *B.* and *C.* executed to a banking firm, consisting of *E.*, *F.* and *G.*, a power of attorney, empowering them "jointly and severally" to receive the dividends and to sell out the stock itself. The power was sent by the bankers to their broker, who deposited it with the Bank of *England*. *F.* alone clandestinely sold out the stock, but the firm had credit for the proceeds. The sale was concealed, and the amount of dividends for some time accounted for. Held, that *E.* was liable for the sale, though it had taken place after the death of *C.* and *G.*; and that he would have been equally liable, though the proceeds had not been placed to the credit of the firm. *Sadler* v. *Lee*. vol. 6, p. 324

2. A trustee, one of a firm of stock-brokers, misapplied the trust securities. His partners were, under the circumstances, made responsible. *La Marquise De Ribeyre* v. *Barclay*. vol. 23, p. 107

3. *A.* who was in partnership with *B.*, *C.* and *D.*, as stock-brokers, was one of the trustees of the Plaintiff's marriage settlement. Some Portuguese bonds belonging to her, which were in *A.*'s custody, were included in the settlement. After the marriage, the firm bought some Brazilian bonds on account of the trust. The Court, from the course of dealing, considered the bonds to be in the custody of the firm, and *A.*, the trustee, having applied them to his own use, held, that his co-partners were, as custodians, liable to replace them. *Ibid.*

4. Trust money was sent to *A. B.* (one of a firm of solicitors, who was himself one of two trustees) for investment on mortgage. The money was paid into the bankers to the account of the firm, and was afterwards drawn out by *A. B.*, and never invested. Held, that the other member of the firm was liable. *Eager* v. *Barnes*. vol. 31, p. 579

PARTNERSHIP SUIT (COSTS OF).

The costs of a suit to take the partnership accounts are ordinarily paid out of the partnership assets. *Bonville* v. *Bonville.* vol. 35, p. 129

PARTNERSHIP (WINDING-UP).

1. Confirmed and incurable insanity is a ground for dissolving a partnership, but a mere diminution of capacity in attending to it is insufficient for that purpose. *Sadler* v. *Lee.* vol. 6, p. 324
2. *A.* authorized the sale of his share in a brewery to *B.*, his surviving partner, whom he appointed one of his executors. *B.* conceiving he had duly become the purchaser, carried on the business until his death, and it was subsequently carried on by *C.*, his executor. Afterwards, upon a bill filed, the sale was set aside, and the estate of *A.* became entitled to share in the profits made subsequent to *A.*'s death. *C.* afterwards became bankrupt, having the whole trade property in his possession. Held, that the trade creditors during the time the business was carried on by *C.*, had no lien for their debts on *A.*'s share. *Stocken* v. *Dawson.* vol. 9, p. 239
3. As to the equity of a creditor of a partnership to obtain payment out of the separate estate of a deceased partner. *Brown* v. *Gordon.* vol. 16, p. 302
4. The distinction between joint and separate assets is not restricted to the cases of a distribution under a bankruptcy or insolvency; it applies equally to the ease of the administration of assets of deceased partners. *Ridgway* v. *Clare.* vol. 19, p. 111
5. In the administration of the assets of a deceased partner, where both partners are solvent, there is no distinction made between joint and several creditors; they are all paid, and in taking the partnership accounts, the joint debts thus paid will be allowed in account by the surviving partner. *Ibid.*
6. If the estate of the deceased partner be insolvent, and that of the surviving partner solvent, the joint creditors will naturally go against the surviving partner, who will then be a creditor against the separate estate of the insolvent partner for the amount paid by him to the joint creditors beyond his share. *Ibid.*
7. If both the deceased and surviving partner are insolvent, then the joint creditors must resort, in the first instance, to the joint estate, and can only go against the separate estate of each partner after the claims of his separate creditors have been satisfied. *Ibid.*
8. If both partners die before administration takes place, the rule is the same. *Ridgway* v. *Clare.* vol. 19, p. 111
9. Partners having stipulated to devote their whole time to the business, and one having discontinued his services, an inquiry was, upon a dissolution, directed as to what was proper to be allowed to the other partner in respect of the business having been exclusively conducted by him. *Airey* v. *Borham.* vol. 29, p. 620
10. Where, upon the sale of a business, a surviving partner had liberty to bid: Held, that the book debts and business ought to be sold together in one lot. *Johnson* v. *Helleley.* vol. 34, p. 63
11. A partnership was carried on for fourteen years between *B.* and *G.* under the style of "*B. & Co.*" On the dissolution, the assets were divided, but no arrangement was come to as to the style. Held, that the name or style of "*B. & Co.*" formed an undivided asset of the partnership which belonged to the partners in common after the dissolution, and that *B.* was not entitled to prevent *G.* using the style of "*B. & Co.*" in his business. *Banks* v. *Gibson.* vol. 34, p. 566

PATENT.

[*See* INJUNCTION.]

1. A bill filed by a patentee, to restrain the the piracy of his patent and for an account, did not distinctly state the specification or explain the nature of the invention for which the patent right was claimed; but it alleged that the specification was duly enrolled, and that the drawings and description in the specification could not be set out in the bill, and it charged that the Plaintiff was the inventor and that the invention was new: the Court (not without some doubt) held, on the authority of *Kay* v. *Marshall*, that the bill was not demurrable. *Westhead* v. *Keene.* vol. 1, p. 287
2. Before the grant of the Plaintiff's patent, the reach in spinning-machines varied from less than an inch to thirty-six inches, according to the length of the fibre of the material. The Plaintiff discovered a new and improved mode of preparing flax and other fibrous substances, in which process the fibre became shortened, and the length of the reach in spinning it was necessarily diminished. The Plaintiff obtained a patent, *first*, for thus preparing the flax and other fibrous substances: and *secondly*, for spinning it at a shorter reach than had been done before, namely, at two inches and a half. Held, that the second part of the patent could not be supported, and that the patent was, therefore, invalid. *Kay* v. *Marshall.* vol. 1, p. 535
3. Under the *5 & 6 Will. 4*, c. 83, a pa-

tentee by the authority of the Solicitor-General, entered a memorandum of alteration of the enrolment of the specification, and which it was alleged extended the patent and infringed upon another patent granted to the petitioner. Held, that the Master of the Rolls had no jurisdiction to order such memorandum of alteration to be expunged. *In re Sharp's Patent, ex parte Wordsworth.* vol. 3, p. 245

4. Jurisdiction and practice in correcting clerical errors in letters patent; the proceedings in obtaining them, and in the enrolment. *In re Nickel's Patent.* vol. 4, p. 563

5. The clerk at the enrolment office cannot receive an enrolment conditionally, and the Master of the Rolls refused to cancel or vacate an enrolment of a specification which had been left at the office, and had been enrolled notwithstanding directions not to enrol it until further order. *In re Brough.* vol. 7, p. 104

6. A patentee applied to the Court of Chancery to stay all proceedings on *scire facias* to repeal the patent, or that a *nolle prosequi* might be entered, on the ground, first, that the prosecutor was an alien; secondly, that he had no special interest in the patent or the repeal of it, but was acting in collusion with other persons, with a view to oppress the patentee; and thirdly, that the security for costs given by the prosecutor was improper and insufficient. Held, that the Court had no authority to interfere in the matter. *The Queen* v. *Prosser.* vol. 11, p. 306

7. In the ordinary course of proceeding upon a writ of *scire facias* to repeal letters patent, it is within the discretion of the Attorney-General to determine upon what or whose information, or on what terms or security, he will permit the action to be prosecuted, and the exercise of his discretion, in the conduct of the action, is not subject to the control of the Court in which the proceeding takes place. *Ibid.*

8. In case of apparent hardship appearing to the Judge to arise from the enforcement of a legal right in proceedings before him, or hardship arising from failure of security for costs from the death of the relator or otherwise, the Judge may properly suggest to the Attorney-General the propriety of considering the case, and may properly stay the proceedings, to give to the Attorney-General an opportunity of deliberately considering the subject; but he has no authority to overrule that decision when formed. *Ibid.*

9. An illegal monopoly is a public grievance, and the Crown having been informed of such a grievance, and having the power and duty to remove it, if it be such, ought not to be disabled from directing the necessary proceedings to ascertain the truth, because the information was given by an alien, or by a person who had no special or direct interest in the matter, or was endeavouring to promote the interest of some other person, or was actuated by some improper motive. *Queen* v. *Prosser.* vol. 11, p. 306

10. The practice of requiring security from the prosecutor in a *scire facias* to repeal a patent is not founded on any law or rule of Court, but seems to have been very properly introduced by the authority of the Attorney-General alone, almost within living memory. There is no instance whatever of the Court having interfered upon that subject. *Ibid.*

11. On a motion for an injunction to restrain the alleged infringement of a patent, the Defendant insisted, first, on the invalidity of the patent; and secondly, that he had not infringed it, and an action was directed. Afterwards, the Defendant pleaded in equity simply the want of novelty of the patent. This Court, on allowing the plea, gave the Plaintiff liberty to apply to modify the order made on the application for the injunction, so as to make it conformable to the issue tendered by the plea. *Young* v. *White.* vol. 17, p. 532

12. Clerical error, consisting of the insertion of the name of "Charles" instead of "George" in the enrolment of a patent, ordered to be amended. *Re Dismore.* vol. 18, p. 538

13. A patentee, in 1853, assigned his patent, but the assignees omitted to register it under the 15 & 16 *Vict.* c. 83, s. 35. Afterwards, in *August*, 1855, the patentee assigned the patent to another person, who registered it on the same day. The first assignees registered their assignment a week afterwards. The Court, in 1857, on the motion of the first assignees, ordered the register of the second assignment to be expunged, and with costs, under the 38th section. *Re Green's Patent.* vol. 24, p. 145

14. As to the jurisdiction of the Court to "expunge, vacate and vary" entries on the "Register of Proprietors" of patents under the 15 & 16 of *Vict.* c. 83, s. 38. *In re Morey's Patent.* vol. 25, p. 581

15. The Court can, on motion, expunge an entry fraudulently made, and can direct any facts relating to the proprietorship to be inserted on the register; but not the legal inferences to be drawn from them. *Ibid.*

16. Letters-patent dated the 26th of *February*, 1855, were, under the 16 *Vict.* c. 5, s. 2, to cease "at the expiration of three years from the date thereof, unless there be paid, before the expiration of the said three years," an additional stamp duty of 50*l.* This stamp duty was paid on the

26th of *February*, 1858. Held, that the payment had been made within the time, and that the patent was still subsisting. *Williams* v. *Nash*. vol. 28, p. 93

17. *P.* agreed to purchase from *K.* a patent for purifying paraffine, and to work it during fourteen years, "in case it could be so long worked at a profit," and to pay a royalty of one-third of the difference between the market price of crude paraffine and the price it sold at. It turned out that although it could be worked at a profit, yet deducting the royalty reserved there would be a loss. Held, that the agreement was at an end. *Kernot* v. *Potter*; *Potter* v. *Kernot*. vol. 30, p. 343

18. An invention was described in a book published in *France*, copies of which were sent to *England*, to a bookseller, for sale. Held, that this was a publication of the invention, and that no valid patent could afterwards be taken out in this country for the same invention. *Lang* v. *Gisborne*. vol. 31, p. 33

19. Whether upon a bill to restrain the infringement of a patent, it is necessary to allege that the patentee has duly paid the instalments of stamp duties necessary to keep the patent alive, under the 16 & 17 *Vict.* c. 5, s. 2, *quære*. *Sarazin* v. *Hamel*. (No. 1.) vol. 32, p. 145

20. Hoops of whalebone, cane and other substances, suspended from the waist and forming a petticoat, had long since been used by ladies. The Plaintiffs took out a patent for using, for the same purpose, hoops made of steel watch-springs. Held, that this was not an invention which could properly be made the subject of a patent. *Thompson* v. *James*. vol. 32, p. 570

21. Upon the dissolution of a partnership between the Plaintiffs and the Defendant, the Defendant assigned to the Plaintiffs all his interest in a patent which formed part of the assets. Held, that the Defendant could not afterwards set up the invalidity of the patent as against the Plaintiffs. *Chambers* v. *Crichley*. vol. 33, p. 374

22. As to the right of one of the several co-owners of a patent to use it separately from the other co-owners without accounting for the profits. *Mathers* v. *Green*. vol. 34, p. 170

23. *A.* obtained a patent for a machine, after which *A.* and *B.* jointly obtained a patent for improvements of the same machine. *A.* used both patents independently of *B.* Held, by the Master of the Rolls, that *B.* was entitled as against *A.* to an account of his, *B.*'s, share of the profits derived from *A.*'s user of the second patent, but his decision was overruled by the Lord Chancellor. *Ibid.*

24. The Defendant having, in ignorance, infringed the Plaintiff's patent, submitted and offered before suit to pay the amount of profits made, which were very trifling. At the hearing, though a perpetual injunction was granted, no costs were given, and an account was granted only upon the Plaintiff's request and at his peril. *Nunn* v. *D'Albuquerque*. vol. 34, p. 595

25. A patentee is not entitled, after replication, to an order, under 15 & 16 *Vict.* c. 85, s. 41, for the delivery of particulars of the objections to the patent which the Defendant intends to rely on. *Bovill* v. *Goodier*. vol. 35, p. 264

PATRONAGE.

[*See* ADVOWSON, SIMONY.]

1. The founder of an hospital or almshouse, by annexing the right of nomination to a particular manor, held not to have made them inseparable; but that the right of patronage was in the nature of a lay advowson, which the lord might alien without parting with the manor, and the converse. Held, also, that by the common law, the grant of a manor by the King *cum pertinentibus* would pass an advowson appendant to it, and that the statute 17 *Edw.* 2, c. 15, created a restriction as to advowsons of churches only and did not apply to the case of a lay advowson. *Attorney-General* v. *Ewelme Hospital*. vol. 17, p. 242

2. A benefice is not made spiritual because it can only be held by one in holy orders. An hospital for poor without cure of souls is a lay foundation, although the master is required to be in holy orders. *Attorney-General* v. *St. Cross Hospital*. vol. 17, p. 435

PAUPER.

[*See* FORMA PAUPERIS.]

The 1 *Will.* 4, c. 36, sect. XV. rule 17, did not authorize the Court to order that the costs of a Defendant's contempt for not answering, and who is too poor to pay them, may be costs in the cause. *Robey* v. *Whitewood*. vol. 7, p. 54

PAYMENT.

[*See* CONDITIONAL GIFT, DEBT, LAPSE, PAYMENT (DEBTS AND LEGACIES), PAYMENT INTO COURT, PAYMENT OUT OF COURT, RELEASE.]

PAYMENT (DEBTS AND LEGACIES, CHARGE OF DEBTS).

[*See* EXECUTOR, PERIOD OF DIVISION.]

1. A testator gave some pecuniary legacies to infants, to be paid to them on their

attaining twenty-one; and by a codicil he directed, that as far as it might be practicable, all his legacies should be paid within six months after his decease Held, that the direction in the codicil did not accelerate the time of payment to the infant legatees. *Frost* v. *Capel.* vol. 2, p. 184

2. When a legacy is directed to accumulate for a certain period; or where the payment is postponed, the legatee, if he have an absolute indefeasible interest, is not bound to wait until the expiration of that period, but may require payment the moment he is competent to give a valid discharge. *Saunders* v. *Vautier.* vol. 4, p. 115

3. Legatees made *bonâ fide* endeavours to realize the primary fund on which legacies were charged, but failed to prove the existence of such primary fund by reason of the non-production of the account books. The real estate (being the secondary fund) was directed to be sold for payment of the legacies, but the decree was made, without prejudice to any claim which might be made in respect of the primary fund, in any other proceeding against any party who might be answerable for the same. *Rowley* v. *Adams.* vol. 7, p. 548

4. An absolute vested bequest was accompanied with a direction, that it should not be delivered till the legatee attained twenty-five. Held, that he was entitled to payment on attaining twenty-one. *Rocke* v. *Rocke.* vol. 9, p. 66

5. Where trustees, under an erroneous view of the effect of a will, pay to parties money to which they are not entitled, this Court, in administering the estate, will compel a restitution and repayment, and will give a lien on the other interests of such parties under the will, even as against an assignee for valuable consideration. *Dibbs* v. *Goren.* vol. 11, p. 483

6. As to the right of a creditor to come in under a decree at any time before the fund has been distributed. *Hartwell* v. *Colvin.* vol. 16, p. 140

7. A testator bequeathed leaseholds to trustees, to pay the rents to his wife till his son attained twenty-one, and then to assign them to his son. The wife died during the minority of the son. Held, that her legal personal representative was entitled to the rents until the son attained twenty-one. *Laxton* v. *Eedle.* vol. 19, p. 321

8. A testatrix bequeathed several legacies, and, amongst others, one to a servant, "if he should be residing with her at the time of her decease, but not otherwise;" and she directed the said legacies to be paid "*within* six months after her decease," and declared that the legacies should not be vested until payable. The legatee died before the expiration of six months. Held, that the representatives of the legatee were entitled to the legacy. *Lucas* v. *Carline.* vol. 21, p. 367

9. A purchaser of a legacy which has been paid or delivered, cannot be called on to refund or pay any portion of a debt subsequently established against the testator's estate. *Noble* v. *Brett.* vol. 24, p. 499

10. Legatees held not liable to refund, at the suit of other legatees, payments voluntarily made to them by the executors, under a mistake, but held liable to recoup out of the undistributed funds in which they were interested. *Downes* v. *Bullock.* vol. 25, p. 54

11. A testator gave all his personal estate to his wife for life, and he bequeathed 40*l.* to *A. B.*, and other pecuniary legacies, all of which were payable at her death. By a first codicil, he gave a legacy of 200*l.* to *C. D.* (who was not mentioned in his will), and he directed that all things in his codicil should be performed as if the same were so declared in his will. By another codicil, he revoked the legacy of 40*l.* to *A. B.* and gave her 50*l.* Held, that the legacy of 200*l.* was payable at the death of the testator, but that the payment of the legacy of 50*l.* was postponed until the death of the widow. *Giesler* v. *Jones.* vol. 25, p. 418

12. An executor administered an estate, and paid over the residue. Ten years after, a creditor of the testator brought an action of covenant against the executor, who filed a claim for administering the estate and a bill to make legacies standing in the joint names of the executor and legatee applicable to the payment of the debt. The debt was paid out of the legacy, but Held, that the executor was entitled to no costs of the action or suits. *Noble* v. *Brett.* (No. 2.) vol. 26, p. 233

13. The costs of all parties were, in 1857, ordered to be taxed and paid out of a fund in Court, and the residue was directed to be paid to the parties entitled. Solicitors, who had acted for some Defendants down to 1840, had no notice of the order, and their costs had been omitted in the taxation. Upon their petition, these costs were ordered to be taxed and paid by the parties to whom the residue of the fund had been paid over. *Armstrong* v. *Storer.* (No. 2.) vol. 27, p. 471

14. Bequest of residue to four sons equally, but the capital not to be divided until they should all become settled in life. The interest of their portions alone to be paid after they were all provided for until they severally became thirty years old,

when the capital to be placed at their disposal. Held, that the sons were entitled to payment of the capital on attaining twenty-one. *In re Jacob's Will.* vol. 29, p. 402

15. As to the liability of a residuary devisee and legatee to whom all the assets have been handed over without having provided for the primary charges thereon. *Hepworth* v. *Hill.* vol. 30, p. 476

PAYMENT (INTO COURT).

[*See* ACCOUNTANT-GENERAL, DIRECTORS, TRUSTEE RELIEF ACT, VENDOR AND PURCHASER.]

1. The sum to be allowed executors for the expenses of transferring a large sum of money into court is one guinea, and extra brokerage was, therefore, disallowed. *Hopkinson* v. *Roe.* vol. 1, p. 183

2. An executor and trustee, who had lent trust money on unsurrendered copyholds, a deposit of a lease, and a bond, ordered, on motion, to pay the amount into court. *Wyatt* v. *Sharratt.* vol. 3, p. 498

3. On an application for payment of money into Court, it was objected that persons having an interest were not before the Court. The order was made on the undertaking of the Plaintiff to make them parties. *Whitmarsh* v. *Robertson.* vol. 4, p. 26

4. An order, on motion, for payment into Court by a trustee of trust funds admitted to have been sold out under a power of attorney executed by him, refused, on the ground that there was not a sufficient admission of the misapplication, and the trustees being authorized to vary the investments. *Meyer* v. *Montriou.* vol. 4, p. 343

5. The right of the Plaintiff to have money in the Defendant's hands paid into Court, must proceed on admissions in the answer, made in reference to an equity raised by the bill, and not in reference to an independent equity stated only in the answer. *Proudfoot* v. *Hume.* vol. 4, p. 476

6. Administrator ordered on motion to transfer a sum of Consols into Court, upon admission in his examination before the Master that he had possessed it, and sold it out after the bill had been filed, and invested it in other securities, which he did not specify. *Hinde* v. *Blake.* vol. 4, p. 597

7. A trustee admitted he had sold out trust stock, but he stated that he had invested the produce in other securities. A motion was made before decree, that he might repurchase the stock and transfer it into Court. Held, that the Court could make no such order. *Futter* v. *Jackson.* vol. 6, p. 424

8. Where trust money appears to have been invested on an improper security, it will, on motion, be ordered to be brought into Court within a given time; but if the case be proper, the period will be extended from time to time, to enable the Defendant to realize the security. *Score* v. *Ford.* vol. 7, p. 333

9. Where part of a residuary estate has been invested on an improper security, and the Defendant has an interest therein, the Court, on being satisfied that there is no existing claim on the estate, sometimes confines the amount to be paid into Court to the share of the Plaintiff. *Ibid.*

10. The whole fund ordered under the circumstances to be paid into Court by an administratrix, who was partially interested. *Ibid.*

11. An order upon motion, for payment of money into Court, proceeds upon the admissions of the Defendant, and evidence cannot be resorted to. *Boschetti* v. *Power.* vol. 8, p. 98

12. Three trustees admitted that trust money was standing in their joint names, but one only specified the amount. Held, that this was insufficient to found an order for its payment into Court. *Ibid.*

13. Two trustees were authorized to invest trust money in their names "on good security;" one trustee improperly invested 1,500*l.* on mortgage of leaseholds, in his own name, the other had declined to act any longer. The security realized 215*l.* only. The trustee was, on motion, ordered to pay the difference into Court. *Bourne* v. *Mole.* vol. 8, p. 177

14. Taxation of a bill was directed on the terms of paying a sum of money into Court. The fund accumulated. Held, that the solicitor was not entitled to the stock and the benefit of the accumulations, but that the whole must be sold and the produce applied in part discharge of the bill. *In re Smith.* vol. 9, p. 342

15. Upon a sale under the Court, an order upon the purchaser to pay his purchase-money into Court cannot be obtained, until the title has been accepted, or the Master's report obtained in its favour; and such an order obtained before such acceptance or report, upon affidavit of service of the notice of motion, was discharged with costs. *Butler* v. *Marriott.* vol. 10, p. 33

16. On a motion to pay assets of a testator into Court, the Court declined to direct the payment of the income to the tenant for life, to be continued, unless the executor took upon himself the responsibility of the payment. *Abby* v. *Gilford.* vol. 11, p. 28

17. Before the General Orders of *June*, 1848, money might be paid in to the name of the Accountant-General, under

the 10 & 11 *Vict.* c. 96, without any order of the Court. *In re Biggs.* vol. 11, p. 27

18. Motion to produce documents and to pay money into Court refused, on the ground that the Plaintiff's title was not sufficiently admitted by the answer. *M'Hardy* v. *Hitchcock.* vol. 11, p. 73

19. On such a motion, the Court does not require the Plaintiff to produce any absolute admission of title, but merely such a probability of title as it can safely act on. *Ibid.*

20. A party having a contingent interest in a trust fund may, in a proper case, have it brought into Court for his protection; but he must shew some sufficient ground for it. *Ross* v. *Ross.* vol. 12, p. 89

21. Motion to pay trust fund into Court, refused, on the ground that there was no allegation of danger, and that the fund might, if necessary, be sufficiently protected by a *distringas*. *Ibid.*

22. A Plaintiff cannot, after decree, obtain an order for the Defendant to pay money into Court upon admissions contained in his answer. He must proceed on the examination or report. *Wright* v. *Lukes.* vol. 13, p. 107

23. A railway company, under pressure, paid the purchase-money for lands bought of a corporation to the vendors, instead of paying it into Court under the 8 & 9 *Vict.* c. 18, s. 69. Upon a bill filed by the former, the latter were, on motion, ordered to pay into Court the purchase-money in their hands for the purpose of *interim* protection. *London and North-Western Railway Company* v. *Corporation of Lancaster.* vol. 15, p. 22

24. Two trustees, having power to alter and vary a trust fund, sold it out for that purpose, but allowed the produce to be received by one alone. Held, that the other, who failed to shew that the fund was properly invested, was bound to pay the amount into Court. *Wiglesworth* v. *Wiglesworth.* vol. 16, p. 269

25. An executor, for some years, received the rents of property specifically bequeathed. The specific legatee having instituted a suit against him, Held, that he could not set up the adverse title of a third party as a defence to a motion to pay the amount into Court. Held also, that the executor was not entitled to deduct the amount of debts, &c. paid by him, there having apparently been sufficient general assets out of which they ought to have been paid. *Lord* v. *Purchase.* vol. 17, p. 171

26. Motion to pay money into Court, on a certificate of the Chief Clerk, signed and approved by the Judge, but made before the expiration of the eight days, refused. *Douthwaite* v. *Spenaley.* vol. 18, p. 74

27. *A.* and *B.* were appointed trustees, and *A.*, *B.* and *C.* executors of a will. *A.* and *C.* alone proved. *B.*, in his answer, said he declined to act in the trusts, but it appeared that *B.* and his partner were indebted to the testatrix at her death, and that her executor had lent them part of the assets, and that they had paid some of her debts. The Court, on motion, ordered *B.* to pay into Court the balance due from him and his partner, who was not a party to the suit. *White* v. *Barton.* vol. 18, p. 192

28. Right of a party, entitled contingently in remainder, to have the trust fund brought into Court at the hearing, though there be no imputation against the trustees. *The Governesses' Benevolent Institution* v. *Rusbridger.* vol. 18, p. 467

29. A large balance was found due from the legal personal representatives, but it appeared that the amount had been received under orders in another suit by their solicitor, who retained it to satisfy large claims he had against his clients. The cause coming on for further consideration, and on a petition of the Plaintiff, the solicitor was ordered to pay the amount into Court. *Bibby* v. *Thompson.* (No. 2.) vol. 32, p. 647

30. Trustees authorized a firm of solicitors (one of whom, *W.*, was a trustee) to draw the trust funds out of a bank. *W.* drew it out and misapplied it. The trustees were, on interlocutory application, ordered to pay the amount into Court. *Ingle* v. *Partridge.* vol. 32, p. 661

31. Three trustees sold out trust funds, and the produce was paid to one alone. The other two were, on motion, ordered to pay the amount into Court. *Ibid.*

PAYMENT OUT OF COURT.

[*See* PARTIES (ABSENT), PAYMENT OUT OF COURT (COSTS), PRESUMPTION, STOP ORDER.]

1. On an application for payment out of Court of money belonging to a married woman, it must either be shewn that there has been no settlement or agreement for a settlement; or, if any settlement exist, it must be produced, to enable the Court to judge whether it affects the fund in question: it is not sufficient to shew by affidavit that the particular fund is not the subject of any settlement. *Rose* v. *Rolls.* vol. 1, p. 270

(*Britten* v. *Britten.* vol. 9, p. 143)

2. Where small sums are payable out of Court to parties, an order will be made to pay them to the solicitor, he undertaking to distribute them; but it is necessary either that the petition, praying payment to the solicitor should be signed by the parties, or that a written authority, signed by the parties, should be produced

to the Court, authorizing the payment to the solicitor. *Kelsall* v. *Minton*. vol. 2, p. 361

3. An order to pay a sum of money out of Court should be obtained by petition and not on motion. *Garratt* v. *Niblock*. vol. 5, p. 143

4. Liability of a party acting as a solicitor in a proceeding in which funds are wrongfully obtained out of court. *Esart* v. *Lister*. vol. 5, p. 585

5. The taxation of a bill was directed on the terms of paying the amount, 50*l*., into Court; it was taxed at 25*l*. The Court, *upon motion*, directed payment out of Court of the fund deposited. *In re Bromley*. vol. 7, p. 487

6. The trustees of a charity being numerous, an order was made to pay the dividends of a fund in Court to the trustees or *any two* of them. *Attorney-General* v. *Brickdale*. vol. 8, p. 223

7. In cases of very small sums, standing to a separate account in Court, and where the title is simple, the Court, to save expense, will order payment upon petition, without attendance in Court. *Petty* v. *Petty*. vol. 12, p. 170

8. Application that payment out of Court of a sum of 39*l*. might be made on a *York* probate refused.

[The practice has since been modified. See the cases in the note.] *Cope* v. *Cope*. vol. 14, p. 649

(*Lasour* v. *Tyrconnel*. vol. 10, p. 28)

9. A cheque of the Accountant-General in favour of *A. B.*, but not delivered out, is not *A. B.*'s property, so as to be liable to be seized by the Sheriff under the provision of the 1 & 2 *Vict.* c. 110, s. 12. Leave to seize such a cheque refused, but a stop order was granted. *Courtoy* v. *Vincent*. vol. 15, p. 486

10. An allowance of income *pendente lite*, under the 15 & 16 *Vict.* c. 86, s. 57, will only be made upon the admission by the executors of assets. *Knight* v. *Knight*. vol. 16, p. 358

11. *A. B.*, who was entitled to a fund in Court, assigned it to *C. D.*, who was resident in *India*. *C. D.* appointed *E. F.* his attorney in *England*. On the joint petition of *A. B.*, *C. D.*, and *E. F.*, the fund was paid out to *E. F.* *Fell* v. *Jones*. vol. 17, p. 521

12. Moneys found due to the estate of a deceased person will not be paid over to the representative appointed under the 15 & 16 *Vict.* c. 86, s. 44, but will be carried over to a separate account. *Byam* v. *Sutton*. vol. 19, p. 646

13. When it is asked that small sums may be paid out of Court, to the solicitor of the parties entitled, the Court requires the production of their written consent. In a case where the consent was signed by eleven out of twelve of the parties, and the twelfth was in *America*, the Court dispensed with his signature on the solicitor's undertaking to pay over the amount. *Staines* v. *Giffard*. vol. 20, p. 484

14. A fund in Court belonged in reversion to a married woman. After her death, the husband, in 1821, sold and assigned it. The tenant for life died, and it having been found impossible to obtain from him an affidavit of no settlement, the Court, in 1858, ordered payment to the assignee without one, on proof of there having been no children. *Clarke* v. *Woodward*. vol. 25, p. 455

15. Liberty given to apply at Chambers in respect of the shares of infants amounting to 379*l*. each, in an undivided fund. *Winkworth* v. *Winkworth*. vol. 32, p. 233

16. Money settled to the separate use of a married woman is paid out of Court without any personal examination. *Lechmere* v. *Brotheridge*. vol. 32, p. 353

17. Moneys are never paid out of Court to an administrator *ad litem*. *Williams* v. *Allen*. (No. 2.) vol. 32, p. 650

18. An order to pay over a fund to persons, by name, is, incidentally, a determination that other persons, who are not named, are not entitled. *Sheppard* v. *Sheppard*. vol. 33, p. 129

19. A fund paid into Court for the purchase, under "The Defence Act," of lands which were subject to contingent charges was ordered to be paid out to trustees, they having powers to sell the land and to give discharges for the purchase-money. *Ex parte Morshead, Re "The Defence Act, 1860."* vol. 33, p. 254

PAYMENT OUT OF COURT (COSTS).

1. In a creditors' suit, a mortgagee consented to a sale, and the produce, which was insufficient to pay the mortgage, was paid into Court. Held, that the parties to the suit were not entitled to any costs of a petition presented by the mortgagee for payment out of Court of the fund to him. *Carr* v. *Henderson*. vol. 11, p. 415

2. The costs of an application by a new master of an hospital for payment of the income of a fund in Court, held payable out of the income. *Att.-Gen.* v. *Smythies*. vol. 16, p. 385

3. A railway company took lands which were vested in one for life, with remainder over, and were subject to a mortgage in fee and to mortgages of the life estate. Held, that the company must pay the costs of the mortgagees of a petition for the investment of the fund and the application of the income. *Re Brooke*. vol. 30, p. 233

4. Upon a petition to obtain out of Court the purchase-money for lands taken

under "The Defence Act, 1860" (23 & 24 *Vict.* c. 112), it is not necessary to serve the Secretary of State who paid it in. *Re "The Defence Act*, 1860."
vol. 33, p. 254

5. Upon a petition in a suit for payment of the income of a fund in Court to the petitioner, the costs must be borne by the applicant. *Eady* v. *Watson.*
vol. 33, p. 481

PENALTY.

[*See* DISCOVERY, FORFEITURE.]

1. King *Charles* the Second, by letters patent, granted some property in fee, subject to a fee farm rent, and to a proviso of re-entry, in case a decree should be made at the suit of the King for repairing the property, and the same should afterwards remain for a year out of repair. The Crown afterwards granted away the rent. Held, that the proviso for re-entry could not be exercised, and that it therefore formed no objection to the title to the property. *Flower* v. *Hartopp.*
vol. 6, p. 476

2. A surgeon at *W.*, upon taking an assistant, required him to give his bond, in a penalty, not to practise at *W.* Afterwards he discharged the assistant, who thereupon commenced practice at *W.* The surgeon then filed a bill to restrain him, to which the Defendant demurred. The Court overruled the demurrer, holding that, notwithstanding the pecuniary penalty, the Plaintiff was entitled to a remedy in equity. *Fox* v. *Scard.*
vol. 33, p. 327

3. The Defendant contracted to grant the Plaintiffs an underlease of property held by him under the *C.* company, and he covenanted that if the *C.* company refused to grant a licence for that purpose he would pay the Plaintiffs 1,000*l.* by way of liquidated damages. Held, that the Defendant could not escape a specific performance by refusing to apply for a licence and by paying to the Plaintiffs the 1,000*l.* *Long* v. *Bowring.*
vol. 33, p. 585

"PER CAPITA" OR "PER STIRPES."

[*See* CHILDREN, GIFT TO A CLASS, ISSUE (GIFT TO).]

1. A testator devised real estate in trust, for the persons who at his decease should be the next of kin of *R. D.* deceased, according to the Statute of Distributions, and their heirs as tenants in common. The next of kin consisted of great-grandchildren's children, and the children of great-grandchildren's children. Held, that they took *per stirpes*, and not *per capita.* *Mattison* v. *Tanfield.*
vol. 3, p. 131

2. Bequest "to *A.* and to the children of *B.*, to be equally divided." Held, that they took *per capita.* *Dowding* v. *Smith.*
vol. 3, p. 541

3. A testatrix directed her trustees to divide the rents, &c. of her real estate equally between *A.*, *B.*, *C.*, and *D.* the widow of *E.*, until *E.*'s children attained twenty-one; and upon their attaining twenty-one, the trustees were to sell and divide the produce between *A.*, *B.*, *C.*, and the children of *E.*, "in equal shares and proportions as tenants in common;" but if *D.* married, her part of the income was to be applied to the maintenance of *E.*'s children; and she gave the residue of her real and personal estate "equally between *A.*, *B.*, *C.*, and the children of *E.* who attained twenty-one." There were four children of *E.* who attained twenty-one. Held, that they did not take the property *per capita* with *A.*, *B.*, and *C.*, but one-fourth only between them. *Brett* v. *Horton.*
vol. 4, p. 239

4. Gift to *A.* for life, with remainder to the daughters of *E.* "and their descendants, *per stirpes*, to hold to them, their heirs, and assigns for ever." The daughters had children at the death of the testator and of the tenant for life. Held, that the daughters took absolute interest and in joint tenancy, and that the issue could only take by substitution. *Dick* v. *Lacey.*
vol. 8, p. 214

5. The words *per stirpes* held to import not only distribution, but succession or some species of representation. *Ibid.*

6. Gift of a legacy to *A.* for life, with remainder to *B.* for life, and after the death of the survivor, upon trust to pay it "to, between or amongst *C.*, if then living, but if then dead, to, between and amongst *C.*'s children and the children of *B.* then living, equally, &c." Held, that *C.* and the children of *B.* took *per capita.* *Rickabe* v. *Garwood.*
vol. 8, p. 579

7. Residuary bequest in trust for *A.* for life, and, after her decease, to distribute "between the testator's brothers and sisters, and such of their children as should be then living, the parents and children to be classed together, and to share in equal proportions." Held, that those brothers and sisters and children only who survived *A.* were entitled, and that they took *per capita.* *Turner* v. *Hudson.*
vol. 10, p. 222

8. Bequest of 2,000*l.* to be equally divided amongst testator's next of kin, both maternal and paternal. Held, that the fund was divisible between the two classes *per capita*, and not *per stirpes.* *Dugdale* v. *Dugdale.*
vol. 11, p. 402

9. Bequest to be equally divided between

A. and wife and *B.* and wife for their lives, after which, to be equally divided between their children, *i. e.* the children of *A.* and *B.* Held, that their children took *per capita*, and that on the death of *A.* and his wife, a moiety became divisible, equally, amongst the children of *A.* and *B.* *Abrey* v. *Newman.* vol. 16, p. 431

10. A testatrix bequeathed stock to *T. P.* and *J. S.* for their lives, and from and after their decease, to the "surviving children" of the said *T. P.* and *J. S.*, share and share alike. Held, that the children living at the death of the survivor of *T. P.* and *J. S.* were alone entitled, and that they took *per capita* and not *per stirpes.* *Stevenson* v. *Gullan.* vol. 18, p 590

11. A testator directed his executors to pay and divide the residue "unto and amongst his own next of kin under the Statute of Distributions." Held, that brothers and deceased brothers' children took *per stirpes.* *Lewis* v. *Morris.* vol. 19, p. 34

12. Bequest of residue to "divide" the same between the brothers of *A.*, and the nephews of *B.*, and my housekeeper *C.* Held, that they did not entitle *C.* to one-third, but that all the objects took equally. *Anson* v. *Harris.* vol. 19, p. 210

13. The testator gave a residuary fund to his brothers and sisters for life, and from and after the decease of the survivor to pay the principal to their issue who should live to attain twenty-one, or the issue of such of them as should be then deceased, such class of issue, whether in the first or second degree, to take only, as amongst themselves, the shares which their parents would have been entitled to if living. Held, that the children of the brothers and sisters took *per stirpes*, and that the children of one of the testator's nephews, who died in the testator's lifetime, took with their uncles and aunts the share which their father would have taken if then living. *Shand* v. *Kidd.* vol. 19, p. 310

14. A testator gave a fund to his wife for life, with a power to her to appoint it by will amongst "*A.*, *B.* and *C.* and their respective children," and in default of appointment, he directed the same at his wife's death, to go amongst all the said children equally. The wife made no appointment. Held, 1st, that the children alone took, to the exclusion of their parents; 2ndly, that they took *per capita*; and 3rdly, that the fund vested in the children living at the death of the testator, subject to its being divested by the exercise of the power, or by the birth of other children before the death of the tenant for life. *Pattison* v. *Pattison.* vol. 19, p. 638

15. The testator had a son and two daughters (*A.* and *C.*) living, another daughter (*B.*) was dead, having left five daughters. He bequeathed 15,000*l.*, as to 5,000*l.* for *A.* for life, with remainder to her children, as to 5,000*l.* to the five daughters of *B.* and as to the remaining 5,000*l.* to *C.* for life, with remainder to her children. He then gave the residue "equally amongst his son, his daughter *A.*, the five daughters of *B.*, and his daughter *C.*, to be settled as he directed the three sums of 5,000*l.* on them and their issue." Held, that the five daughters of *B.* took *per capita*, so that each was entitled to one-eighth of the residue. *Tyndale* v. *Wilkinson.* vol. 23, p. 74

16. Bequest of shares, the profits to be invested and the interest applied in the education of the children of *A.* and *B.* in equal shares; "and on their attaining twenty-one, the whole to be sold and divided equally among them." There was a gift over if *A.* and *B.* should die without issue. *A.* and *B.* had no child at the testator's death:—Held, that all the children of *A.* and *B.* took, and that the class was not limited to those born when the first attained twenty-one; and secondly, that the children of *A.* and *B.* took *per capita*, and not *per stirpes.* *Armitage* v. *Williams.* vol. 27, p. 346

17. Bequest between and amongst all and every the child and children of *Thomas T.* deceased, and *Henry T.*, in equal shares. Held, that all the children of *Thomas* and of *Henry* took equally, *per capita*, and not *per stirpes*, and that *Henry* himself took nothing. *In re Davies's Will.* vol. 29, p. 93

18. A testator bequeathed his residue to his wife for life, and afterwards "to his and her next of kin in equal shares." Held, that the nearest of kin of both took as one class, and not *per stirpes.* *Rook* v. *The Attorney-General.* vol. 31, p. 313

19. Bequest to the descendants of the brothers and sisters of the testator's grandfather, in equal shares, *per stirpes* and not *per capita.* There were two sisters. Held, that the fund was divisible, in the first instance, into moieties, and that one belonged to the descendants of one sister *per capita*, and that the other moiety similarly to the descendants of the other. *Robinson* v. *Shepherd.* vol. 32, p. 665

PERIOD OF ASCERTAINMENT.

[*See* GIFT TO A CLASS.]

1. A testator gave specific legacies to three of his nieces (daughters of his sister) by name, and the residue to his sister and her husband for their lives, subject to an annuity to *A.*, and after the death of the

parents and *A.* he directed the residue to be "divided equally between the daughters of his said sister" and which he bequeathed "to his said nieces." There was a gift over, if no daughter of his sister should be *then* living. The sister had four daughters born at the date of the will, and another born after the testator's death. Some only survived the tenants for life. Held, that the residue was divisible among *all* the nieces, and that they took vested interests, subject to be divested in an event which had not happened. *Locker* v. *Bradley*.
vol. 5, p. 593

2. Bequest to *A.* for life, and at her death for her brother and sister and the testator's brothers and sister equally. At the date of the will *A.* had one brother and sister, and the testator had three brothers and one sister. Held, that this was not a gift to an unascertained class, but to the brothers and sisters living at the date of the will. *Havergal* v. *Harrison*.
vol. 7, p. 49

3. Devise to trustees in fee, upon trust to demise until the testator's youngest child attained twenty-one, and during the minority of such youngest child, to pay the rents to the testator's wife, for the maintenance of herself and children, and when and so soon as the youngest surviving child should attain twenty-one, to sell and divide the produce "between and amongst the testator's wife and all his children who should be then living, in equal shares." And in case of the death of any child before the estates became saleable, his children were to take his share. The children all died under twenty-one without issue. Held, that the wife was entitled to the whole estate. *Castle* v. *Eate*.
vol. 7, p. 296

4. Bequest to *A.* during widowhood, and immediately after her death or second marriage, whichever event should first happen, to trustees to sell and divide between several persons named, *or* such of them as should be living at the death of *A.* *A.* married again. Held, that the property thereupon became immediately distributable. *Bainbridge* v. *Cream*.
vol. 16, p. 25

PERFORMANCE.

[*See* SATISFACTION.]

PERIOD OF DIVISION.

[*See* PAYMENT (DEBTS AND LEGACIES).]

1. A limited fund was given to *A. B.* until some child of his should attain twenty-one, and 1,000*l.* Consols was to be paid thereout to each of his children as they attained twenty-one. The fund was insufficient to provide for all the children. A child attained twenty-one. Held, that he was, notwithstanding the deficiency, entitled to 1,000*l.* Consols. *Evans* v. *Harris*.
vol. 5, p. 45

2. Bequest of the interest of one property to two sisters, and of another property to a female cousin, and "in case of the death of the above three females" over. Held, that the gift over took effect as each fund was liberated by the death of the tenants for life thereof respectively. *Swan* v. *Holmes*.
vol. 19, p. 471

3. Under a devise of renewable leaseholds and copyholds to four grandchildren equally, and after their death, "for such children as they or any or either of them should leave her or him surviving." Held, that on the death of each grandchild, his "children" then surviving took as tenants in common. *Waldron* v. *Boulter*.
vol. 22, p. 284

4. By a will, the residue was given to seven persons as tenants in common for life, and on the death of the survivor was to be divided amongst their children then living *per stirpes*. By a codicil, the gift to the children was revoked, and the residue was to be divided "from and after the several deceases" of the seven, "and after the decease of the survivor of them," amongst their children *per capita*. Held, that the words "from and after," &c., were to be read disjunctively, and that, on the death of any of the seven, one-seventh was divisible amongst children of the seven *per capita*. *Cope* v. *Henshaw*.
vol. 35, p. 420

PERISHABLE PROPERTY.

[*See* BREACH OF TRUST, CONVERSION OF ASSETS, INVESTMENT, LIFE TENANT AND REMAINDERMAN.]

1. A testator bequeathed to his widow "all the interest, rents, dividends, annual produce and profits, use and enjoyment of all his, the testator's, real and personal estate" for life, and at her decease he gave to *E. R. P.* "all the rest and residue of his estate and effects whatsoever, both real and personal." Held, on the context of the will, that the widow was entitled to the enjoyment, during life, of the perishable property of the testator "*in specie*," and without a conversion for the benefit of the remainderman. *Pickering* v. *Pickering*.
vol. 2, p. 31

2. A testator possessing long annuities and money in different funds bequeathed the residue of his estate to *A.* for life, and after her death he gave certain stock legacies and whatever there might remain, to *B.* Held, that the long annuities ought to be converted for the benefit of

the parties in remainder. *Lichfield* v. *Baker*. vol. 2, p. 481

3. A testator gave the residue of his estate and effects to trustees, to permit the *rents*, interest and annual proceeds to be received by *A.* for life, and after his decease to *C.* and *D.* when they attained twenty-one, with power, after the death of *A.*, to apply the *rents*, &c. towards the maintenance of *C.* and *D.* until their shares should become vested. Part of the residue consisted of leaseholds. Held, that the tenant for life was entitled to enjoy them in specie, and that they were not to be converted for the benefit of those in remainder. *Goodenough* v. *Tremamondo*. vol. 2, p. 512

4. Executors who, contrary to the trusts of the will, had permitted the tenants for life to enjoy leasehold property in specie, the title to which was bad, but of which no advantage was taken by the owners of the property, being responsible for the value of the lease at the testator's death. Held, that such value should be ascertained, *having regard to the enjoyment actually had thereunder*. *Mehrtens* v. *Andrews*. vol. 3, p. 72

5. A testator gave his widow, "the full and entire enjoyment" of his real and personal estates, which, after her death, he gave to other persons; and he empowered her to retain a portion of a sum of 150*l.*, a year given to other parties, for renewing the leaseholds. Held, she was entitled to enjoy the leasehold *in specie*, that it was not imperative on her to renew, but that she had acted wrong in surrendering a lease, of which she was the only *cestui que vie*, as she thereby deprived herself of the option of renewing for the benefit of the parties in remainder. *Harvey* v. *Harvey*. vol. 5, p. 134

6. A testatrix gave her property, with certain exceptions, to her granddaughter, and afterwards stated "that her property was in the Bank and *India* House." Held (assuming her to take for life), that she was entitled to enjoy the Bank and *India* stock *in specie*, and that it was not liable to be converted into Consols. *Hubbard* v. *Young*. vol. 10, p. 203

7. A brewer, who carried on trade upon leasehold premises, gave his freeholds, leaseholds, shares in the brewery, moneys, and personal estate to trustees upon trust, after raising an annuity and portions "to pay to or permit and suffer or well and sufficiently to authorize and empower his son and his assigns to receive and take the interest, dividends and annual income for life." The Court, though of opinion upon the context, that if there had been no question as to the trade, the son would have been entitled to enjoy the leasehold property for life, in specie, yet, thinking that there was not sufficient to authorize the carrying on of the trade, held, that the testator's property ought to have been converted on the testator's death. *Kirkman* v. *Booth*. vol. 11, p. 273

8. A testator possessed of sums in various stocks and of long annuities, gave certain specific and general stock legacies; "and as to all the rest, residue, and remainder of his estate," he gave to his widow for life. And after her decease he bequeathed "*it*" as follows:—He then gave various general stock legacies, and whatever then might be remaining, after the above-mentioned divisions had been made, he gave to the Plaintiffs. Held, that the widow was not entitled to enjoy the Long Annuities in specie. *Lichfield* v. *Baker*. vol. 13, p. 447

9. A tenant for life was wrongfully permitted to enjoy a perishable property *in specie*. The executor died, and the tenant for life then proved the will, and continued to receive the income. On a bill against the representatives of the executor and the tenant for life, which contained no special charge, and after the common decree: Held, that in such a suit, a legatee could not be made to refund over-payments voluntarily made by the executor; and, secondly, that the tenant for life must account for the surplus income received by her after she had proved the will, but not for that received before. *Ibid.*

10. The rule laid down in *Howe* v. *The Earl of Dartmouth* (7 *Ves.* 137*a*) is, that where property of a perishable nature is given to be enjoyed in succession, the object of the testator can only be effected by converting the property into permanent annuities, and giving each person, in succession, the dividends of the fund. This rule prevails, unless there can be gathered from the will some expression of intention that the property is to be enjoyed *in specie*, and which it is incumbent on those contesting the application of the rule to point out. *Morgan* v. *Morgan*. vol. 14, p. 72

11. Modern cases allow small indications of intention to prevent the application of the rule; but the mere absence of any direction to convert is insufficient. *Ibid.*

12. Upon the construction of a will, held that the tenant for life of a residue was not entitled to the perishable property *in specie*. *Ibid.*

13. A power to vary securities is important, as shewing, that the testator did not intend his residue to remain on perishable security. *Morgan* v. *Morgan*. vol. 14, p. 85

14. A testator, after giving some legacies, proceeded: "The residue of my property, of every description it may be at my death, I bequeath the interest and

proceeds thereof to" *A.* for life. He then gave the "interest and proceeds" to others for life, and after their deaths he bequeathed "the said residue" to another. Held, that *A.* was not entitled to the specific enjoyment, and that the whole of the property, after paying some legacies, must be converted into Consols. *Thornton* v. *Ellis.* vol. 15, p. 193

15. Railway shares, although not a perishable property, must be converted into Consols as between the tenant for life and remainderman. *Ibid.*

16. A testator gave his freehold, copyhold and leasehold estates, and all his stocks, shares and personal estate, to trustees, in trust to receive the "rents," issues and profits, and thereout to keep the houses, &c. in good, substantial and tenantable repair, and renew his leaseholds, &c., and then to pay "the net income arising from the residuary real and personal estate" to his wife for life. Held, first, that the wife was entitled to enjoyment *in specie;* and secondly, that all ordinary repairs were to be paid out of the income, but not such extraordinary repairs as would amount to rebuilding the houses. *Crowe* v. *Crisford.* vol. 17, p. 507

17. A testator devised his real and personal estate to trustees, upon trust to sell and put out one-ninth of the produce in Government or real securities, and to pay the interest to *A.* for life, and afterwards to her children. By a codicil, he bequeathed a leasehold to the trustees, to hold upon the same trusts, in all respects, and for the same persons, and subject to the same powers, provisoes, conditions and limitations, as the above one-ninth. Held, that *A.* was not entitled to enjoy the leasehold *in specie*, but that it must be sold, and invested for the benefit of the parties entitled in succession. *Murton* v. *Markby.* vol. 18, p. 196

18. A testator gave "all his freehold, copyhold and leasehold estates, and all other his real and personal estate," to trustees, upon trust to get in all money due to him on "mortgages, bonds or other securities and rents," and after payment of debts and legacies, to lay out the residue in the public stocks or funds; and as to one-half of his "freehold, copyhold and leasehold estates, and all the trust moneys, stocks, funds and securities, and all other his real and personal estate," upon trust for *A.* and *B.* for life, and "the inheritance and capital," after their decease, to be in trust for the children of one of them. Held, that terminable government annuities, and annuities for years charged on parish rates, and furniture, &c., forming part of the testator's estate, ought to be converted into Consols, but that the leaseholds were to be enjoyed *in specie.* *Hood* v. *Clapham.* vol. 19, p. 90

19. A testator gave "all his property, both real and personal," to his wife for life, and he authorized her, with the consent of his executors, to sell or exchange "any part of his property." After her death, he gave "all his property, both real and personal," to his daughters, and afterwards to their children. Held, that the tenants for life were not entitled to enjoy the property *in specie*, but that the perishable part must be converted. *Jebb* v. *Tugwell.* vol. 20, p. 84

20. A testator gave the "residue of his estate and effects" to trustees, upon trust to sell sufficient to pay his debts, and after payment, to hold "his said residuary estate and effects," in trust to pay "the rents," interest, dividends and annual produce to *A.* for life. There was a power to let and sell with the consent of *A.* Held, that *A.* was entitled to enjoy leaseholds *in specie.* *Hind* v. *Selby.* vol. 22, p. 873

21. A testator having freeholds and leaseholds, gave "all his real and personal estate" upon trust, "out of the rents and profits of his said real and personal estate," to pay his widow sufficient for her maintenance; and on her death, he devised "all his said real and personal estate" to his children. Held, that the trustee was not bound to convert the leasehold property. *Wearing* v. *Wearing.* vol. 23, p. 99

22. Trustees, having a discretion, allowed a reversionary interest to remain unsold for nineteen years, when it fell into possession. Held, that the tenant for life, who had, in the meanwhile, received nothing in respect of income on it, was entitled to be recouped out of the fund. *Wilkinson* v. *Duncan.* vol. 23, p. 469

23. A testator gave the residue of his estate and effects, in trust to pay "the annual proceeds to his wife" for life, and after her death, to divide "his said residuary estate and effects" between his nephews and nieces; and he directed that his nephews, in the division, should take such parts of the joint property as he held with them. Part of the joint property was leasehold. Held, that the tenant for life was entitled to enjoy the whole perishable property *in specie.* *Holgate* v. *Jennings.* vol. 24, p. 623

24. Where a tenant for life is entitled to enjoy *in specie*, the rule is, that investments may remain, but debts, as turnpike bonds, must be realized. *Ibid.*

25. A testator bequeathed to his widow "the interest dividends or income of all moneys or stock," and "of all the property whatsoever yielding income at his

decease" for her life, the principal to remain untouched, and at her death to be divided amongst his children. Held, that the widow was entitled to enjoy the residue *in specie*. *Boys* v. *Boys*. vol. 28, p. 436

26. A testator gave his real and personal estate to trustees, to permit his wife to receive "the income arising from one-third" for her life, with remainder to his children. And to facilitate the ultimate devise, he authorized them to convert his personal estate into money, and to sell his real estate. And he authorized his trustees to permit any part of his personal estate to remain in the state of investment in which it might be at his death, and to invest his residuary personal estate in the public funds, &c., and, from time to time, to alter and vary the securities. Held, that the widow was not entitled to enjoy leaseholds and perishable property *in specie*. *Re Llewellyn's Trust*. vol. 29, p. 171
27. Where a part of the testator's assets were so situated, that it could not be realized immediately without loss to the estate, and was producing 5*l*. per cent., the tenant for life was held entitled, in the meanwhile, to 4*l*. per cent. on the value. *Ibid.*
28. Right of a tenant for life to enjoy a residue in specie inferred from a direction "to get in and convert the same into money and divide" after his death. *Rowe* v. *Rowe*. vol. 29, p. 276
29. Devise of residue of real and personal estate on trust to permit *A. B.* to "receive and take the rents, issues and profits" for life, with remainder over. Held, that *A. B.* was entitled to enjoy leaseholds and railway stock *in specie*. *Vachell* v. *Roberts*. vol. 32, p. 140

PERPETUATION OF TESTIMONY.

1. Depositions of witnesses, examined under a bill to perpetuate testimony, in aid of an ejectment, and who were resident abroad and refused to come to this country, ordered to be published. *Biddulph* v. *Lord Camoys*. vol. 19, p. 467
2. A similar application refused, as to a witness in *England*, who, on account of blindness and infirm state of health, was stated to be unable to leave home, and who had stated his age to be eighty-three. *Ibid.*
3. A witness, examined under a bill to perpetuate testimony, was very old, and unable, through illness, to leave his home without danger; another was resident in *Canada*. Their depositions were ordered to be published, and produced at the trial about to take place, and that either party might make such use of them as by law they can." *Biddulph* v. *Lord Camoys*. vol. 20, p. 402
4. Principles and practice as to bills to perpetuate testimony stated. *Ellice* v. *Roupell*. (No. 1.) vol. 32, p. 299
5. Distinction between a bill to perpetuate testimony and a bill of discovery. The former is not a bill of discovery in the strict technical sense of the term. *Ellice* v. *Roupell*. (No. 2.) vol. 32, p. 308
6. A bill of discovery must be in aid of proceedings pending or about to be instituted, but the existence of such proceedings would be fatal to a bill to perpetuate testimony. *Ibid.*
7. A bill to perpetuate testimony cannot, by amendment, be converted into a bill of discovery. *Ibid.*
8. Whether a prayer for the perpetuation of testimony and for discovery can be united in one bill, *quære*. *Ibid.*
9. The only discovery which a Plaintiff in a bill to perpetuate testimony can require from a Defendant is, a sufficient admission of his title to examine such witnesses as he may think fit on the various matters and issues stated in the bill. *Ibid.*
10. A bill for perpetuating testimony, if brought to a hearing, will be dismissed with costs. *Ibid.*
11. The Plaintiffs filed a bill to perpetuate testimony as to the validity of a deed, which question, they alleged, could not at present be tried. After the Defendants had, by answer, admitted the Plaintiffs' right to perpetuate the testimony, the Plaintiffs filed another bill, raising the question of the validity of the same deed. A motion, by the Defendants, to stay proceedings in the suit to perpetuate testimony, on the ground of the existence of the second suit, was refused with costs. *Ellice* v. *Roupell*. (No. 3.) vol. 32, p. 318

PERPETUITY.

[*See* VESTING.]

1. Bequest to testator's wife for life, and after her death to make a division between the testator's four children, *A.*, *B.*, *C.* and *D.*; his son's shares to be paid immediately, and his daughter's shares to be invested for them for life, with remainder between all their children, to become vested at the age of twenty-five, with a gift over to the children of the others who should live to attain the age of twenty-five in case either daughter should die without leaving any child who should live to attain twenty-five; with powers for the maintenance and advancement of such children. Held, that the gift over was too remote; and secondly,

that the gift to the daughters in the first instance being absolute, and the attempt to limit it having failed, the absolute interest remained unaffected, so that the representatives of a daughter who died without children were entitled to her one-fourth share. *Ring* v. *Hardwick*. vol. 2, p. 352

2. A testatrix gave her residuary estate to trustees to accumulate, and to stand possessed thereof and of the accumulations, in trust for all the children of *J. B.*, other than *A.*, and to be paid on attaining twenty-three, with a gift over in the event of the death of all the said children under twenty-three. *J. B.* had three children, *A.*, *B.* and *C.*, of whom *A.* and *B.* were born in the lifetime of the testatrix, and *C.* three years after her death. *B.* died an infant, and *C.*, who was also *B.*'s personal representative, attained twenty-three. Held, first, that the legacy was vested; and the gift being to a class, and *C.* having come into *esse* before the period of distribution, the Court considered that *C.* was not excluded from taking under the residuary gift, and that in his own right and as representing *B.* he was entitled to the whole fund. *Blease* v. *Burgh*. vol. 2, p. 221

3. Bequest in trust to accumulate for all the children of *A.* and *B.* (who were living) equally, the shares of sons to be *vested* at twenty-five, and of daughters at twenty-five or marriage, and if one child only to be *paid* at twenty-five or marriage. Held too remote. *Griffith* v. *Blunt*. vol. 4, p. 248

4. Bequest of a residue to *A.* (who had no children) for life, and at his death 5,000*l.* to be deposited in the hands of trustees for the use of *A.*'s eldest son, at his attaining the age of thirty years; the rest to be equally shared, *A.*'s eldest son taking an equal share in addition to the 5,000*l.*, and the general division to take place as each respectively attains twenty-four. Held, not too remote. *Greet* v. *Greet*. vol. 5, p. 123

5. A testator, after giving his real estate to the eldest son of *A.* for life, with remainder to the other children of *A.* in tail, with remainder over, gave his personalty in trust to pay the dividends to the children and grandchildren of *A.* who should not, "from time to time," be entitled to the rents of the freeholds. By a codicil, he declared that the children of *B.*, *C.* and *D.*, living at the death of the tenant for life, should "take their shares" of the personal property with the representatives of *A.* Held, that the gift was to the children and grandchildren living at the death of the tenant for life, and was not too remote. *Harvey* v. *Harvey*. vol. 5, p. 134

6. A gift is too remote, unless, according to the intention of the testator, some person must necessarily be in existence, with legal power to dispose of the property, within the period limited by the rules of law. *Curtis* v. *Lukin*. vol. 5, p. 147

7. A gift must not only vest within the time limited by the rule against perpetuities, but the interests of the respective parties in the property must be capable of ascertainment within that period, otherwise the gift will be void. *Ibid.*

8. A gift of personalty to trustees for *A.* for life, and after his death in trust for the children of *A.* "as they severally attained twenty-five years," the income to be applied during their respective minorities by their guardian for their maintenance, &c., with a gift over in case no child of *A.* should live to attain twenty-five. Held to be vested, and not too remote. *Davies* v. *Fisher*. vol. 5, p. 201

9. Bequest to *A.* for life, with remainder to her children, who should attain twenty-five, with a clause for maintenance during minority, and for accumulation of surplus income. Held, that the gift to the children was void for remoteness. *Marquis of Bute* v. *Harman*. vol. 9, p. 320 (*Southern* v. *Wollaston*. vol. 16, p. 166)

10. Validity of a bequest in *England* of personal estate to be laid out in lands in *Scotland*, according to limitations creating a perpetuity. *Fordyce* v. *Bridges*. vol. 10, p. 90

11. A testator devised his real estate in strict settlement, subject to a term of 2,000 years, limited to trustees for raising 500*l.* a year, and accumulating it as a sinking fund for payment of his mortgage debts, &c. to a considerable amount. Held, that the trust, though unlimited in its duration, was valid. *Bateman* v. *Hotchkin*. vol. 10, p. 426

12. A testator, during the lives of the children which *M. G.*, his daughter (who was living), "had or should have," devised the rents of an estate on trust for them, for their lives, with a substituted gift to the issue of any child dying leaving issue during that period, and a gift over to the survivors of the children, on the death of any without leaving issue. The Court, considering, that by the terms of the gift, children born after the testator's death would be included, held, that the substituted gift to the issue of the grandchildren was void. *Gooch* v. *Gooch*. vol. 14, p. 565

13. A testator gave an annuity of 200*l.* a year to *T. M.* for life, and after his death to his children then living for life, in equal shares; and, at the decease of any of them, his share of the capital producing the annuity was to be divided amongst his children. Held, notwith-

standing there were children of *T. N.* living in the testator's lifetime, and the gift to the children was as tenants in common, that the bequest to all of the grandchildren of *T. N.* was void for remoteness. *Greenwood* v. *Roberts.* vol. 15, p. 92

14. Devise in trust for *A.* for life, with remainder to any of his children, as he should appoint. At the date of the will *A.* had no child, but at the death of the testator he had a son, *B.*, three years old. *A.*, by will, appointed to trustees and their heirs, in trust for *B.* and his heirs, and to be conveyed to him at twenty-three, with a gift over to other sons if *B.* died under twenty-one; and he directed the rents to be accumulated until *B.*, or such other sons, should attain twenty-three, and then to pay them over. Held, that the gift was not too remote, and that direction to accumulate was valid. *Peard* v. *Kekewich.* vol. 15, p. 166

15. The doctrine laid down in *Leake* v. *Robinson* as to remoteness applies to real as well as to personal estate. *Walker* v. *Mower.* vol. 16, p. 365

16. A testatrix appointed a trust fund to two trustees, in trust to pay the dividends to *A.* for life, and after his decease, she gave the dividends to two others, *B.* and *C.*, for life: and after the decease of the survivor, she gave, bequeathed, willed and directed the principal to be divided into two parts, and one of them to be "transferred or paid" to the children of those two persons respectively at the age of twenty-five years. Held, that the gift to the children was void for remoteness. *Chance* v. *Chance.* vol. 16, p. 572

17. Devise of real estate to *A.* for life, and after his decease to all his children share and share alike, and all their children and their heirs, but in default of issue of *A.* to *B.* and *C.* and their children, the mothers and children and their heirs to share the rents equally as had been directed with regard to the children of *A.* Held, that the gift to *B.* and *C.* was not too remote, and that they and their children living at the death of the testator took as tenants in common in fee. *Cormack* v. *Copous.* vol. 17, p. 397

18. The testatrix directed her trustees to settle her property, but in such a way, that some of the limitations would be void for remoteness. Held, that in carrying the direction into effect, the Court would modify the limitations, so as to make them consistent with the rules of law and equity. *Lyddon* v. *Ellison.* vol. 19, p, 565

19. Limitations of a term to trustees, upon trust to raise portions for the children of *A.* surviving *A.* and *B.*, "to vest in and to be paid and payable to" them at their ages of twenty-four years, with maintenance, &c. in meanwhile out of the expectant or presumptive shares, and a gift over on the death of all before their shares should become vested. Held, void for remoteness. *In re Blakemore's Settlement.* vol. 20, p. 214

20. A testator bequeathed the income of his residuary estate between his three children, and when any child died, his part to be equally divided amongst the testator's surviving grandchildren; and likewise, if any of his grandchildren died, their part to be divided amongst the survivors of his other grandchildren. Held, that the gift over, upon the death of a grandchild to the surviving grandchildren, was void for remoteness. *Courtier* v. *Oram.* vol. 21, p. 91

21. A trust fund was limited, after the death of husband and wife, and in default of appointment to their children equally, to be a vested interest in, and to be paid, transferred or assigned to sons at twenty-five, and daughters at twenty-five or marriage, with benefit of survivorship in case of death under twenty-five, and as to daughters, in case of being unmarried. Held, that the limitation was void for remoteness. *In re Morse's Settlement.* vol. 21, p. 174

22. Devise in trust for *A.* for life, and after her decease to apply the rents for the benefit of her children, until the youngest attained twenty-five; and, as soon as the youngest should have attained twenty-five, to sell, and "pay and divide" the produce equally "among such of the children of *A.* as should be then living, and issue of such, if any, of her children as might be then dead," such issue to take their parents' share only. Held, that the gift of the income was valid, but that the gift of the *corpus* was void for remoteness. *Read* v. *Gooding.* vol. 21, p. 478

23. Where there is a gift to a class, some of the objects of which are too remote and some not, effect cannot be given to the latter separated from the former, but the whole gift is void. *Seaman* v. *Wood.* vol. 22, p. 691

24. The produce of real and personal estate was bequeathed upon trust for *A.* for life, and after his death upon trust "to pay or transfer" it unto such children of *A.* as should attain the age of twenty-one years, and also such children of any son of *A.* who should die under twenty-one, as should attain that age, equally, but the children of any deceased son collectively to take their parent's share equally, with certain gifts over. Held, that the whole of the limitations subsequent to the life estate were void for remoteness. *Ibid.*

25. A testator devised his estates to trustees in trust, after *A. C.*'s decease, "in case

she should have only one child which should survive her," to pay 200*l.* a year for his maintenance until he should attain twenty-five; and from and after such only child should attain that age, to raise 10,000*l.*, and pay the same to him at that age. Or in case *A. C.* should, at her decease, have two or more children," then to raise an annuity for their maintenance "until they should respectively attain twenty-five, and when they respectively attained that age, to pay each an equal share of the 10,000*l.*" The Plaintiff was *en ventre sa mère* at the testator's death, and was the only child of *A. C.* who survived her. Held, that the bequest of the 10,000*l.* was too remote. *Merlin* v. *Blagrave*, vol. 25, p. 125

26. Trusts for sale on failure of a series of prior limitations. Held, on the context, to be too remote. *Hale* v. *Pew*. vol. 25, p. 335

27. Bequest to a living person for life, and afterwards to his children, followed by a declaration that these interests should be considered vested interests at the age of twenty-five, and a gift over to the issue of any dying under twenty-five. Held, too remote. *Rowland* v. *Tawney*. vol. 26, p. 67

28. A testator gave his residuary estate to his daughter for life, and afterwards to her two sons *Henry* and *Charles*, and all other her children thereafter to be born, and the issue of his grandchildren, who, being a son, should attain twenty-one, or being a daughter, should attain that age or marry with consent, equally to be divided, such issue to take a parent's share. Held void for remoteness. *Webster* v. *Boddington*. vol. 26, p. 128

29. Distinction between a bequest having two alternatives, one of which is valid and the other too remote, and a gift depending on the failure of a previous limitation, which is too remote. *Re Thatcher's Trusts*. vol. 26, p. 365 (See *Cambridge* v. *Rous*. vol. 25, p. 409)

30. A testator bequeathed a legacy to his son, and after his decease and on the youngest of the son's sons attaining twenty-one, to divide it equally between the son's sons and the issue of deceased son's sons who should attain twenty-one, the issue to take the share which their father would have taken if living. Whether the gift after the son's death is wholly void, or only as the share of the issue, *quære*. *Salmon* v. *Salmon*. vol. 29, p. 27

31. Gift by will to daughters for life, and afterwards to "pay and divide" amongst their issue [children] then living at twenty-five, the whole interest being given in the meantime for their maintenance during minority. Held, that the gift to the children was not too remote. *Tatham* v. *Vernon*. vol. 29, p. 604

32. When there is a gift to a class, some of whom are within the rule against perpetuities, and some not, but the class itself, and the shares of each, cannot be ascertained within the legal limits as to time, the whole gift is void. But where the individual shares of the members of the class can be ascertained within the proper periods, the gift is valid as to those within the rule against perpetuities, though invalid as to the rest. *Wilkinson* v. *Duncan*. vol. 30, p. 111

33. Property was bequeathed by an uncle in trust for his nephew *A.* for life, with power to him to appoint it amongst his children. *A.* directed the trustees "to pay 2,000*l.* to each of his daughters, as and when they should respectively attain twenty-four years of age," and to pay the residue "between his sons equally, as and when they should respectively attain twenty-four years of age." Held, that the bequests were valid as to such of *A.*'s daughters as were three years of age at his death, but void for remoteness as to the rest. *Ibid.*

34. A bequest of money, the interest of which was to be applied in keeping up the tombs of the testator and of his family, is void as a perpetuity. *Rickard* v. *Robson; In re Rickard*. vol. 31, p. 244

35. Gift of residue of real and personal estate to *A.* for life, and after her decease in trust for all her sons and daughters, who should attain twenty-two equally, with a power to apply the "annual income or fund" for their maintenance or benefit" during their "minority." Held void for remoteness. *Thomas* v. *Wilberforce*. vol. 31, p. 299

36. A testator devised real estates to trustees, to the use of *A.* for life, with remainder to his first and other sons successively in tail, with remainder to *B.* for life, with remainder to his first and other sons in tail, &c. And he bequeathed his personal estate to the same trusts, estates, &c., "or as near thereto as the rules of law and equity would admit." Provided nevertheless, that the personal estate should not "vest absolutely in any tenant in tail, unless such person should attain the age of twenty-one years." Held, by the Master of the Rolls, that the gift of the personalty was too remote; but the Lord Chancellor held, that the proviso only applied to tenants in tail taking by purchase. *Gosling* v. *Gosling*. vol. 32, p. 58

37. A testator devised a real estate at *L.* to two colleges for charitable purposes, and he proceeds thus: "and the lease of the said *L.* to be, at one-third part under true value, to my said wives' kindred for ever, viz. brothers and sisters there and at *Harrow*." Held, that the direction as to the lease was void as a perpetuity, and

that the colleges took discharged of it. *Att.-Gen.* v. *Greenhill.* vol. 33, p. 193

38. Upon an information insisting on the invalidity of the above gift. Held, that the existing lessee under the gift sufficiently represented the other kindred, if any. *Ibid.*

39. Construction of a trust for division amongst the children of brothers so long as the law would allow. *Pownall* v. *Graham.* vol. 33, p. 242

40. A testator gave his real and personal estate to his seven brothers and to the survivor for life, and after the death of the survivor, in trust to apply the income yearly to such of their children as should appear to them to stand in need of the same, and after the law admitted of no such further division, then to convey to the eldest son of his brother *B.* then living. Held, that the trust for division ceased twenty-one years after the decease of the surviving brother. *Ibid.*

41. Bequest of personal estate, in trust, when and as the child and children of *A. B.* should severally attain the age of twenty-one years, to pay and divide the same equally between them and the children of such of them (if any) as might depart this life under the age of twenty-one years; but so, nevertheless, that the children of any deceased child, on attaining twenty-one, should take between them such share only as the parent would have taken if living. Held, not too remote. *Packer* v. *Scott.* vol. 33, p. 511

42. Bequest of 500*l.*, upon the permanent trust to appropriate the income in the maintenance of the testator's family graves, and to pay the "surplus" to the rector of *B.* for the time being. Held, that the first trust was void as a perpetuity, and that the second was void for uncertainty. *Fowler* v. *Fowler.* vol. 33, p. 616

43. A testator bequeathed five leasehold houses, having about fifty-four years to run, to his daughter for life, with remainder to her children. And after the expiration of any of the leases he directed his trustees to convey to his daughter and her children one or more of his five freehold houses of equal annual value, or as near as could be, to the expired leasehold. Held, that the devise was neither invalid for remoteness nor uncertainty. *Wood* v. *Drew.* vol. 33, p. 610

44. A testator, who died in 1811, was entitled to the reversion of an estate expectant on the death of his son without issue living at his death. By his will, after reciting that he was entitled to the reversion on the death of his son, without issue generally, he devised it to trustees to sell upon the death of his son, without issue generally, and divide the produce. Held, that the trust was not void for remoteness. *Lewis* v. *Templer.* vol. 33, p. 625

45. A testator declared that the bequests to one daughter (*C.*) should be enjoyed by her for life, and then be put in trust for the benefit of the children she might leave, and to be divided at twenty-five. And he "in like manner" directed the bequests to his second daughter (*M.*) should be paid to her for life, and after her death "may be continued in trust and may be divided equally between her children after they have attained the age of twenty-five." Held, that the bequest to the children of *M.* was not too remote, and that they took vested interests at their births. *Saumarez* v. *Saumarez.* vol. 34, p. 432

46. Where a bequest is made to persons *in esse* for life, with remainder to their unborn children, with a general direction that the female children shall take for their "separate and inalienable use," such restriction against alienation is too remote and void. *Semble.* *Armitage* v. *Coates.* vol. 35, p. 1

47. Under several bequests to living persons for life, with remainder to their children born and unborn, with a general proviso that the shares of females shall be for their separate inalienable use: Held, that the restriction against anticipation applied only to the tenants for life, in consequence of a direction for payment to the children and a proviso that their receipts should be good discharges. *Ibid.*

PETITION.

[*See* CHARITY, LANDS CLAUSES ACT, NEW TRUSTEE, PETITION (COSTS), PETITION OF RIGHT, TAXATION.]

1. An order made upon petition on the merits cannot be discharged on motion, *semble;* but where the irregularity of an order, obtained on petition in open court, consisted in its being intituled in a non-existing cause, the Court discharged it on motion. *West* v. *Smith; In re Stevens and Others.* vol. 3, p. 306

2. Mode in which a petition presented under an act of parliament, by which the Court derives its jurisdiction, ought to be intituled. *In re Law.* vol. 4, p. 509

3. A petition being presented for the taxation of a solicitor's bill: Held, that the application was to be considered as made at the latest at the time of answering the petition, and not at the time of service of the petition, or the day appointed for hearing. In cases of accidental delay in the office, the period may be carried further back. *Sayer* v. *Wagstaff.* vol. 5, p. 415

4. The proper mode of bringing before the Court claims, which do not come within the scope of the ordinary decree in a creditor's suit, is by petition. *Barker* v. *Buttress.* vol. 7, p. 134
5. A direction for the Master to settle a conveyance omitted in a decree was supplied by petition. *Trevelyan* v. *Charter.* vol. 9, p. 140
6. The petition of a person not a party to the cause must state his residence, otherwise it cannot be heard. *Glazbrook* v. *Gillatt.* vol. 9, p. 492
7. The Master was directed to charge the Defendants with the rents of some charitable property "from the filing of the information come to the hands of the Defendants." The Master charged them with rents accrued before, but paid after, that period, and his report had been confirmed. The Defendants presented a petition to be relieved from the payment, but the Court held, that there was no plain mistake in the mode of taking the accounts, and declined to interfere except upon a rehearing. *Attorney-General* v. *The Drapers' Company* (*Kendrick's Charity*). vol. 10, p. 558
8. Where, under private acts, &c., the Court has jurisdiction to proceed in a summary way by petition, it is not usual, on directing a reference to ascertain the parties entitled, to direct the production of deeds and documents, and to examine the parties. *In re The London Dock Company* (reversed). vol. 11, p. 78
9. One such reference having been made, the Court refused with costs an application of a second claimant, for a second order containing special directions. *Ibid.*
10. Under an act, certain moneys were to to be distributed on petition. A reference being directed to ascertain the persons entitled, one who was not a party to the reference went in thereunder and failed. He afterwards filed a bill on the ground that he was in want of discovery and evidence, which he could not obtain in the reference. The Court, though it held that the bill was not demurrable, nevertheless stayed the proceedings therein until the Master had made his report. *Hyde* v. *Edwards.* vol. 12, p. 253
11. The petitioner having refused to file the original petition, it was ordered that the respondent be at liberty to file a copy, and that the petitioner do pay the respondent his costs of the application. *Re Devonshire.* vol. 32, p. 241
12. Petitioners neglected to file the petition and had lost it. On the application of the respondents, liberty was given to file a copy, and the petitioners were ordered to pay the costs of the application. *Re the Anglo-Greek Steam Navigation and Trading Company* (*Limited*). (No. 2.) vol. 35, p. 419

PETITION (COSTS).

[*See* COSTS, PAYMENT OUT OF COURT (COSTS).]

1. Where a party is served with a petition or notice of motion, he is not bound to take upon himself the responsibility of deciding whether his interest in the matter is such as to render it unnecessary for him to appear; and he will not be deprived of the costs of his appearance, on the ground that he is not interested in the matter.

A promise by a party to make no opposition to an application intended to be made by another, is not, of itself, a sufficient ground for refusing him the costs of his appearance. *Bamford* v. *Watts.* vol. 2, p. 201
2. Proceedings were stayed as against the legal personal representative. A petition having been presented, professing to deal with funds standing to the general credit of the cause, he was served therewith, and with a notice not to appear. Held, nevertheless, that he was entitled to his costs of appearance. *Rowley* v. *Adams.* vol. 16, p. 312
3. A purchaser under the Court, having obtained his conveyance, ought not to appear upon a petition to obtain the purchase-money out of Court, and he will not be allowed his costs of so doing. *Barton* v. *Latour.* vol. 18, p 526
4. According to the recent practice, the Court, disapproves of the appearance of parties on the hearing of a petition, though served, where their appearance is unnecessary, and their costs will be disallowed. *Day* v. *Croft.* vol. 19, p. 518
5. A party who, from the heading of the account, was properly served with a petition, but whose appearance was unnecessary, refused his costs. *In re Justices of Coventry.* vol. 19, p. 158

PETITION OF RIGHT.

1. It is not competent to the king, or rather to his responsible advisers, to refuse capriciously to put into a due course of investigation any proper question raised on a petition of right. *Semble.* *Ryves* v. *The Duke of Wellington.* vol. 9, p. 579
2. A legatee claiming under an alleged will of *George* III. under the sign manual in pursuance of the 40 *G.* 3, c. 88, s. 10, against the executor of *George* IV., alleging that *George* IV. and his executors had possessed the assets of *George* III., and it alleged that the will had not been, and being a Sovereign's will could not be, proved. A demurrer was allowed on the ground, that until the will had been proved this Court had no jurisdiction, and *semble*, that the proper remedy against *George* IV. would have been by petition of right. *Ibid.*

PIN-MONEY.

There is annexed to wife's pin-money an implied duty of applying it towards her personal dress, decoration and ornament. *Jodrell* v. *Jodrell.* vol. 9, p. 45

PLEA.

[*See* OUTLAWRY, PLEA OF FORMER DECREE, STATUTE OF FRAUDS, STATUTE OF LIMITATIONS.]

1. After an attachment for want of answer, it is irregular to file a plea without first tendering the costs of the contempt. *Foulkes* v. *Jones.* vol. 2, p. 274
2. The bill alleged that the Plaintiff had paid to the Defendants a sum of 1,250*l.* as the balance of accounts between them, the Plaintiff being at that time deranged, and labouring under the erroneous impression that the Defendants could transport him; and it alleged that nothing was due from the Plaintiff, and prayed for an account and repayment. The Defendants, by a plea stated that the parties had come to a settlement of account, and giving credit to the Plaintiff for the sum due to him, a sum exceeding 1,250*l.* was found due to the Defendants, which by final settlement was paid, and receipts given; there was an averment that the accounts were just, that credit was given to the Plaintiff for all sums due, and that Defendants were justly entitled to credit for all sums for which credit had been given: that there was no error in the account, and that the Plaintiff was of sound mind. There was, however, no denial, by answer or averment, that the 1,250*l.* was not due. The plea was overruled. *Newman* v. *Hutton.* vol. 3, p. 114
3. A bill was filed to establish a will as to real estate. It set forth the will, and stated that it had been proved in the proper ecclesiastical court, and it contained an allegation of a pretence on the part of the Defendant, that the will had been altered, whereas it charged the contrary, and that the will was executed in several parts, one copy of which was in the possession of the testator at his death unaltered. The Defendant put in a plea, stating that the will *as proved* did not contain certain passages; and from which it attempted to draw the conclusion that the bill was defective for the want of parties. There was no answer accompanying the plea: Held, that the plea was irregular in point of form. *Strickland* v. *Strickland.* vol. 3, p. 224
4. On overruling a plea liberty given the Defendant to plead *de novo*, and to the plaintiff to amend his bill. *Chadwick* v. *Broadwood.* vol. 3, p. 308
5. The Plaintiff, alleging himself to be son and heir of *A.*, who was the son and heir of *B.*, who was the son and heir of *C.*, who was the eldest brother of *D.*, who was the father of *E.*, the deceased owner of an estate, and alleging the several descents and seisins, filed a bill of discovery in aid of an action at law. The Defendant pleaded that *B.* and the Plaintiff were not heirs of *E.*, and that the property never descended to *B.*, or to *A.*, or to the Plaintiff, and that *A.* and the Plaintiff were never seised, "for that *D.* had never an elder brother *C.*, and *B.* was not the son of any *C.*" The plea was held multifarious, and was overruled. *Chadwick* v. *Broadwood.* vol. 3, p. 530
6. Plea overruled on the ground of its not being accompanied by an answer as to a fact affecting, as evidence, the truth of the plea. *Ibid.*
7. On overruling a plea, liberty was given to the Plaintiff to amend, and to the Defendant to plead *de novo.* Held, that the Defendant might, by a second plea, raise as a defence objections which he had passed over in his first plea. *Ibid.*
8. Whether a negative plea can be filed to a bill of discovery in aid of an action at law, *quære.* *Ibid.*
9. *A.* brought an action at law against *B.*, and filed a bill of discovery, in aid of the action, against *B.* alone. *B.* pleaded that he was a mere mortgagee, and that he ought not to be compelled to give the discovery in the absence of *C.* the mortgagor. The plea was overruled. *Balls* v. *Margrave.* vol. 3, p. 448
10. A plea for want of parties, to a bill in respect of a legacy given to a class of children to vest at twenty-one or marriage, objected, that the representative of *A. B.*, a deceased child of that class, had not been made a party, but it did not shew that *A. B.* had attained a vested interest. The plea was overruled as informal. *Overton* v. *Banister.* vol. 4, p. 205
11. A plea, that *A. B.*, an equitable mortgagee by deposit of title-deeds was not a party, overruled, the bill alleging that the deeds were in the Defendant's possession, but the plea, though alleging a deposit generally, not stating distinctly that they were deposited with *A. B.*, or that they still remained in his hands. *Henley* v. *Stone.* vol. 4, p. 389
12. A second plea for want of parties is valid where the objection is first introduced by an intermediate amendment of the bill. *Ibid.*
13. Plea on information and belief of Plaintiff's bankruptcy. Held regular. *Kirkman* v. *Andrews.* vol. 4, p. 554
14. Leave given to file a double plea to an ejectment bill; viz., not heir, and, secondly, the Statute of Limitations. *Bampton* v. *Birchall.* vol. 4, p. 558

15. *Ex parte* motion for the costs of plea not set down and of suit, refused. *Roberts* v. *Jones.* vol. 7, p. 57

16. A Defendant filed a plea, but the Plaintiff neither set it down, nor took any steps for three terms. The bill was, on motion, dismissed with costs. *Roberts* v. *Jones.* vol. 7, p. 266

17. An information founded on the Defendant's outlawry stated, that the Defendant did not appear on the last proclamation, whereby he "became and was outlawed, and that the sheriff so returned the *exigent* accordingly;" and that the judgment was entered and registered. The Defendant pleaded that no judgment of outlawry had been entered or registered, and that there was no record of the outlawry, leaving uncovered the allegation of the return of the writ certifying the judgment of outlawry. Held, that the plea was good in form. *The Attorney-General* v. *Rickards.* vol. 8, p. 380

18. A trader directed his trustees and executors, with all convenient speed to sell and convert into money his residuary estate; but he provided, that three or (in case of any substantial reason) seven years might be allowed for withdrawing his capital from the business in which he was a partner. Parties beneficially interested under the will filed their bill against the surviving partners and the legal personal representatives, insisting that the administratrix had improperly allowed the testator's capital to remain in the business beyond the prescribed period, and asking to have a share in the profits made while the capital remained in the business. The Defendants pleaded, that before the testator's death the partners made a valuation, when the share of the testator appeared to be 63,000*l.*; that, a year after his death, it was agreed between the surviving partners and the administratrix, that the new firm "should take to the whole stock, on payment to her of 63,000*l.*, and should become purchasers of the testator's share at that sum. That they gave her a bond for 40,000*l.*, and placed the residue at her disposal, which was drawn out from time to time at her pleasure. It appeared that the capital had not been finally withdrawn till 1845. By the plea they insisted, that they had thus become purchasers of the share, for valuable consideration, and without notice of the trusts of the will. Held, that this was a valid defence to the claim to participate in the profits. *Chambers* v. *Howell.* vol. 11, p. 6

19. Upon the death of a Defendant, her representatives were made parties to a bill of revivor. They pleaded that the testatrix had assigned *pendente lite*, and that they never had any interest in the subject-matter of the suit. The plea was allowed. *Nutting* v. *Hebdin.* vol. 14, p. 11

20. To a bill for specific performance, a plea by a sole Defendant of his bankruptcy, subsequent to the bill filed, was allowed. *Lane* v. *Smith.* vol. 14, p. 49

21. When a bill alleges facts, which, if true, would contradict or be evidence to discredit a plea, the plea must be supported by an answer, denying, or at least, if not, giving the Plaintiff discovery as to those facts. *Hunt* v. *Penrice.* vol. 17, p. 525

22. A Plaintiff, claimed as remainderman upon default of issue of *A. B.* The Defendant pleaded that *A. B.* left issue one child, viz. himself, the Defendant. Held, that the plea was informal, it not being accompanied by an answer to charges in the bill, that *A. B.*, in her correspondence with her family, never alluded to her being pregnant, or referred to the Defendant otherwise than as her adopted child, &c. &c. *Ibid.*

23. To a bill for the infringement of a patent, the Defendant pleaded, that the Plaintiff was not the first inventor. Held, that the Defendant need not answer any fact alleged by the bill which would not be evidence to go to a jury on such an issue. As, for instance, the accuracy of the specification; the novelty of the process; the assignment of the patent; the expenditure of money on it; the obtaining *Scotch* and *Irish* patents for the process; allegations as to the opinions of third parties as to the invention, and the truth of the assertions of third parties respecting it, &c. &c. *Young* v. *White.* vol. 17, p. 532

24. The Plaintiff described himself as of "*Gray's Inn*, Barrister at Law, and of No. 2, *Cloisters, Middle Temple.*" The Defendant pleaded, that the description was false, and that the Plaintiff was not resident at No. 2, *Cloisters, Middle Temple.* Held, that the plea was bad in form, not negativing a residence at *Gray's Inn.* *Bainbrigge* v. *Orton.* vol. 20, p. 28

25. But, *quære*, whether, even if correct in form, such a plea could be supported. *Ibid.*

26. A bill of revivor against *A. B.*, alleged that a Defendant to the original bill had died, having by his will appointed *A. B.* executrix, and that she had taken on herself the execution of the will, and had possessed the assets and taken on herself the administration thereof. It prayed revivor against her as such executrix. *A. B.* pleaded simply that she was not executrix. The plea was allowed. *Cooke* v. *Gittings.* vol. 21, p. 497

27. A plea, denying the negative allegation in the bill, is informal. *Lakeman* v. *The Agua Fria Gold Mining Company.* vol. 22, p. 76

28. *A. B.* employed the Plaintiff to sell a lease, and agreed that he should have one-fourth of the produce for his trouble. It was sold to a joint-stock company for a number of paid-up shares. The company accepted notice of the agreement between *A. B.* and the Plaintiff, and promised to hold the Plaintiff's proportion of the shares at his disposal. Afterwards, *A. B.* sold all the shares to the company, who insisted on retaining the Plaintiff's proportion. The Plaintiff filed a bill against the company alone, to recover them, stating that they had never been legally vested in *A. B.*, inasmuch as the certificates had never been delivered to him, and that he had never executed the deed of settlement of the company. The Defendants put in a plea for want of parties, denying that *Palmer* "did not execute" the deed, and averring that his name appeared thereto. The plea was overruled. *Lakeman* v. *The Agua Fria Gold Mining Company.* vol. 22, p. 76

29. The Plaintiffs filed a bill to perpetuate testimony, on the ground that the matters in dispute with the Defendants could not then be made the subject of judicial investigation. The Defendants answered, and the Plaintiffs then amended the bill in immaterial matters. The Defendants then pleaded, that, since the answer, the Plaintiffs had themselves filed another bill, raising the point in dispute, and shewing that the matters in question could now be made the subject of judicial investigation. Held, that the plea could not be sustained, and that, if at all, it ought to have been pleaded in the first instance. *Ellice* v. *Roupell.* (No. 1.) vol. 32, p. 299

30. The 9th rule of the 14th Consolidated Order does not enable a Defendant who has answered the original bill to plead to it after amendment, where it still raises the same issue. *Ibid.*

31. The Defendants mortgaged some leasehold property to the Plaintiffs, who filed their bill to realize their security. Three days afterwards, the Defendants were made bankrupts on their own declaration of insolvency, and they then pleaded their bankruptcy in bar, without averring that their assignee had elected to take the lease. The plea was allowed without costs, with liberty to amend the bill. *Jones* v. *Binns.* vol. 33, p. 362

32. To a bill for the administration of real and personal estate, and for the appointment of a receiver and a new trustee, a plea in bar, by the alleged executors, that they had been prevented proving by the Plaintiff's entering a *caveat* in the Court of Probate, was overruled. *Tempest* v. *Lord Camoys.* vol. 35, p. 201

PLEA OF FORMER DECREE.

1. Under a decree in a legatee's suit to take the usual accounts. *A. B.* went in and claimed the residue which the Master found him entitled to; but the residue was not then ascertained, and no order was made in respect of it. Held, that *A. B.* was not precluded from afterwards asking relief against the executor, in respect of an alleged breach of trust, in a suit of his own, he not having, in the first suit, been in a situation to investigate the accounts of the executor, or to claim the relief which he asked in the second. *Guidici* v. *Kinton.* vol. 6, p. 517

2. Legatees and annuitants are bound by the proceedings in a suit for administration, between the executors and residuary legatees and devisees; although there may be a question as to the debts being primarily charged on the real estate, and which may incidentally affect them. Therefore, after decree in such a suit, legatees cannot sustain an administration suit against the executors. *Jennings* v. *Paterson.* vol. 15, p. 28

3. After a decree for administration, a legatee cannot sue the debtors to recover the assets, in the absence of any refusal or neglect of the personal representatives to do so. *Stainton* v. *The Carron Company and Others.* vol. 18, p. 146

PLEADING.

[*See* AMENDMENT, CO-DEFENDANTS, CROSS SUIT, DEMURRER, EVIDENCE, MISJOINDER, PARTIES, PLEA, REVIVOR, SUFFICIENCY OF ANSWER, SUING ON BEHALF, SUIT, SUPPLEMENTAL BILL.]

1. Where facts, not founded on allegations in the bill, are introduced into affidavits in support of an application for a receiver, the Court will disregard them, and a Defendant acts properly in not answering them. *Dawson* v. *Yates.* vol. 1, p. 301

2. A perishable fund was for some time wrongfully enjoyed in *specie* by the tenant for life; the remainderman filed a bill for an account, and to ascertain the residue. Before filing the bill, the Plaintiff had notice that part of the residue consisted of Long Annuities, and he was again informed of that fact by the answer; but he made no objection thereto, either by the original or the amended bill, and at the hearing the common decree for an account was made. The Master declined entering into the question of the right of the tenant for life to enjoy the Long Annuities, but he stated the fact on his re-

port. The report was confirmed, and by consent no exceptions were taken. Held, on further directions, that the Long Annuities must then be converted into Consols; but the Court refused to make the widow account for her prior receipts. *Lichfield* v. *Baker*. vol. 2, p. 481

3. A bill for discovery, in aid of an action of covenant brought by the assignee of the lessor, stated that the lessor, at the time of granting the lease, was "seised or otherwise well entitled," &c. Held, that this was not a sufficient allegation that the lessor had the legal estate so as to shew the right of his assignee to sue at law on the covenant, and a demurrer on that ground was allowed. *Balls* v. *Margrave*. vol. 3, p. 284

4. Letters proved in the cause, but not referred to in the pleadings, are inadmissible in evidence, even on the question of costs. *Whitley* v. *Martin*. vol. 3, p. 226

5. A Plaintiff cannot by one bill obtain specific relief, and also a discovery on a matter distinct from that specific relief. *Wood* v. *Hitchings*. vol. 3, p. 504

6. In a bill for an account, the Plaintiff, in general terms, charged errors in the accounts between him and the Defendant; and stated, that they appeared in a certain report of an accountant; but the bill did not state the report, or specifically point out the errors. Held, that the Plaintiff could not, on this record, give evidence of the report, or of such errors; and that, notwithstanding the Defendant had stated the report in his cross bill, and had explained some of the errors. *Shepherd* v. *Morris*. vol. 4, p. 252

7. Where there are alternative allegations of facts, the opposite party is entitled to adopt, as against his opponent, whichever of the alternatives he pleases. *Williams* v. *Flight*. vol. 5, p. 41

8. A statement "that the Defendant alleges and the Plaintiff believes the fact to be," is not a sufficient allegation of a material fact. *Egremont* v. *Cowell*. vol. 5, p. 620

9. In a suit against a sovereign prince, who is also a subject, the bill ought, upon the face of it, to shew a case rendering the sovereign prince liable to be sued as a subject.

A simple allegation that a foreign instrument depending on foreign law is null and void, is too vague. *Duke of Brunswick* v. *King of Hanover*. vol. 6, p. 1

10. Where a bill for an account which relies on certain items as the ground for transferring the matter from the jurisdiction of a court of law to that of equity, also contains a general vague charge of there being voluminous and intricate accounts between the parties; then, if the Plaintiff fails in supporting his equity upon the particular items, he cannot maintain the bill against a demurrer upon the latter vague charges. *Darthez* v. *Clemens*. vol. 6, p. 165

11. Mortgagee in possession, claiming upon a bill for redemption, to be allowed for substantial repairs and lasting improvement, but adducing no proof of any such expenditure, held not entitled to any inquiry on the subject. *Sandon* v. *Hooper*. vol. 6, p. 246

12. An allegation that a party "duly made her last will and testament" is sufficient. It is not necessary to state the signature and attestation. *Hyde* v. *Edwards*. vol. 12, p. 160

13. A bond creditor, claiming also an equitable mortgage on real estate, filed his bill for foreclosure, and in aid, for the administration of the personal estate, against the executors and the parties entitled to the mortgaged estate. He failed in proof of the equitable mortgage. Held, that he was not, on such a record, entitled to a decree, as a specialty creditor, for the administration of the real estate. *Chapman* v. *Chapman*. vol. 13, p. 308

14. A bill by the executors of the payee of a note against the maker, prayed payment on the foundation of its loss. It turned out to be in the Defendant's possession, who claimed it by gift from the testator. The suit being brought to a hearing without amendment, *semble*, that it was wrong in form. But the evidence being held sufficient to prove the Defendant's allegation, that the note was actually delivered to him by the testator, intending that he should not be sued upon it, the bill was dismissed with costs. *Cooke* v. *Darwin*. vol. 18, p. 60

15. The insertion of the words "that such other order may be made upon the Defendants as the nature of the case may require," does not convert a bill for discovery into a bill for relief, and, therefore, it is irregular to move to dismiss such a bill for want of prosecution. *The South-Eastern Railway Company* v. *The Submarine Telegraph Company, &c.* vol. 18, p. 429

16. A general allegation, that the Defendant admits the Plaintiff's title, is too vague; the statement should be more circumstantial. *Crowther* v. *Crowther*. vol. 23, p. 305

17. A bill by assignees of a bankrupt prayed to set aside a mortgage executed to a creditor by a bankrupt on the eve of bankruptcy, as being "in fraud of his general body of creditors," and it also prayed general relief. The bill failing on the ground of fraud, held that the Plaintiffs were not entitled to a decree for redemption. *Johnson* v. *Fesenmeyer*. vol. 25, p. 88

18. A pleading is to be taken most strongly against the pleader, and where a bill contains general and specific allegations as to the same matter, the general allegation

must be referred to the particular and specific one. *Ellis* v. *Colman, Bates and Husler.* vol. 25, p. 662

19. A pleading is to be taken most strongly against the pleader, and a general allegation of the Defendant being a trustee cannot support a bill, unless there are facts alleged shewing the trust. *Evan* v. *Corporation of Avon.* vol. 29, p. 144

20. Upon a motion for a decree, a Defendant may have the benefit of the Statute of Limitations, though it is only set up by his affidavit. *Green* v. *Snead.* vol. 30, p. 231

21. A bill prayed that a mortgage might be cancelled and for further relief, but it proved to be valid to some extent. The Court refused the relief asked, or to make a decree for redemption on payment of what was properly due, and dismissed the bill with costs. *The Cronver, &c. Mining Company (Limited)* v. *Willyams.* vol. 35, p. 353

POLICY.

[*See* INSURANCE.]

POOR.

[*See* CHARITY.]

PORTION.

[*See* SATISFACTION.]

1. Portions for children, held raisable during the life of a tenant for life, out of a reversionary term. *Michell* v. *Michell.* vol. 4, p. 549

2. The costs of raising portions is payable out of the estate, and not out of the portions. *Ibid.*

POWER.

[*See* INVESTMENT, POWER (EXECUTION OF), POWER (FRAUD ON), POWER OF APPOINTMENT, POWER OF REVOCATION, POWER TO LEASE, POWER TO SELL OR MORTGAGE.]

1. A tenant for life, having a power to charge the estate with portions for younger children, mortgaged his life estate, and covenanted not to exercise the power. Held, that he could not, afterwards, charge the estate with portions, to the prejudice of his mortgagees. *Hurst* v. *Hurst.* vol. 16, p. 372

2. Under a power to lend 2,500*l.* of the trust funds to the tenant for life: Held, that it was not exhausted by one loan, but, after repayment, the power might be exercised a second time. *Versturme* v. *Gardiner.* vol. 17, p. 338

3. A father had an exclusive power of appointment in favour of his children over a fund, which, in default, was limited to them equally, and, as representative of a deceased son, he was, in default of appointment, beneficially entitled to one-third of the fund. The father *released the power* to his mortgagees. Held, that the power had been effectually destroyed, and the Court declared the rights of the parties consequent on such destruction. *Smith* v. *Houblon.* vol. 26, p. 482

4. A fund was settled in trust for the husband for life or until insolvency, and then to the wife for life, and afterwards to their issue, as the survivor of the husband and wife should appoint, and after their decease, "or the sooner determination of the interests thereinbefore limited to them respectively," in trust for the children then living equally. The husband's estate ceased by his insolvency, and his wife afterwards died, leaving the husband surviving. Held, that his interest having determined, the children's vested interests could not be varied by the execution, by the surviving husband, of his power of appointment. *Haswell* v. *Haswell.* vol. 28, p. 26

5. A power of sale over a settled estate was given to trustees, at the request and by the direction of the tenant for life. The tenant for life became bankrupt. Held, that the power was not extinguished, but that, with the assent of the tenant for life and his assignees, a perfect title could be made under the power. *Holdsworth* v. *Goose.* vol. 29, p. 111

POWER (EXECUTION OF).

[*See* APPOINTMENT.]

1. *A. B.*, being desirous of voluntarily settling property on the female descendants then in existence of *C. D.*, by deed reciting this desire and that certain persons therein named were the only descendants then in life of *C. D.*, settled a part of the property on the persons so named, and reserved to himself a power of appointing the remaining part of the property amongst such several persons before named, which, in default of appointment, was given to those several persons named; he afterwards discovered that there were other descendants in existence of *C. D.*, who had been omitted, and, to remedy the omission, he appointed a part of the fund to an object of the power, upon his executing bonds for the payment to the persons newly discovered, of the amount when received: Held, that the appointment was void, and that the Court would not, in a suit to have the rights of the parties to the appointed fund declared, determine whether the case was such as to entitle the parties to

have the settlement reformed according to the intention of the settlor. *Lee* v. *Fernie.* vol. 1, p. 483

2. A testator gave his residuary property to two trustees for his children, except *John*, who had misconducted himself; but the testator trusted his conduct would change, and he gave *his trustees and the survivors of them*, and the executors and administrators of such survivor, power to give to *John* an equal share with his brothers and sisters. He appointed the two trustees executors, and by a codicil appointed a third executor; one alone proved the will, and the others renounced. In a state of facts brought into the Master's office, the sole executor and trustee stated that *John* had conducted himself to his satisfaction, and in such a manner as to entitle him to an equal share. Held, that the sole executor had power to appoint, and had well appointed a share to *John*. *Eaton* v. *Smith.* vol. 2, p. 236
3. Leaseholds were settled on *A. B.* for life, with remainder to his wife for life, with remainder to such child or children as he should appoint, and in default amongst them equally. *A. B.* renewed the leases in his own name, and by his will confirmed the settlement, and gave all "his freeholds and leaseholds" to his son, and a legacy to his daughter; he died, having other leaseholds besides those settled. Held, that the will was not an execution of the power; and, secondly, that the daughter was not to be put to her election. *Tanner* v. *Elworthy.* vol. 4, p. 487
4. A testator gave his widow the power of appointing his residuary estate. By her will, after reciting the power, she declared that, in pursuance of the power and all other powers enabling her, for the purpose of disposing of her husband's and her own estate, she made her will as follows:—she then directed her debts to be paid, and gave some legacies; and as to all the rest, &c. "of her personal estate," she bequeathed the same to *A.* and *B.* upon trust, &c. Held, that the widow (who died in 1832) had thereby appointed the residuary estate of her husband. *Davies* v. *Fisher.* vol. 5, p. 201
5. The testator give his widow a power to appoint amongst his children a fund, which, in default of appointment, was given between them, but the shares of daughters to be for their separate use for life, with remainder to their children. The widow, by a will not executed with the formalities required by the power, gave the fund to the children equally. The Court supplied the formalities. *Lucena* v. *Lucena.* vol. 5, p. 249
6. Power by deed or will to appoint to "nephews and nieces, grandnephews and nieces," in such shares, and subject to *such trusts*, &c. as *A.* should appoint. Held, not to authorize an appointment by will to a grandniece for life, with remainder to her children. *Waring* v. *Lee.* vol. 8, p. 247
7. A party had a power to appoint by will executed without any particular formality. Upon a petition to obtain the fund out of Court, Held, that it was not necessary to produce the original will, but that the evidence of the probate was sufficient. *Ward* v. *Ward.* vol. 11, p. 377
8. A power to appoint amongst children is not within the 27th section of the Wills Act, and a mere general devise or bequest to a child will not operate as an execution of such a power. *Cloves* v. *Awdry.* vol. 12, p. 604
9. A mother had a power of appointing a reversionary fund to her daughters. A daughter, who was under age, being about to marry, the mother appointed that a moiety of the fund should, on the marriage, become the portion of the daughter, and be vested in her or her intended husband in her right, and to be paid to the husband, his executors, administrators, or assigns, on the death of the tenant for life. Held, although the husband was not an object of the power, and the fund was reversionary, and the daughter an infant, that there was a valid appointment. *Wombwell* v. *Hanrott.* vol. 14, p. 143
10. Settlement on wife for life, with power for her, during the intended coverture, to appoint by will, and in default, over. Held, on the context, that an appointment by will, after the coverture, was invalid. *Holliday* v. *Overton.* vol. 14, p. 467
11. In 1841 Lord *Lake* settled a real estate on himself for life, remainder as he should by will appoint, and in default on the Plaintiffs. By his will he confirmed this deed and the provisions thereby made, and then made a general devise of all his real and personal estate upon trust to give full effect to the deed of 1841, and subject thereto to pay his debts and legacies, and hold the residue for the Plaintiffs. He had no other real estates than those in the deed of 1841. Held, by the Master of the Rolls, that the testator, having by his will confirmed the deed, could not be deemed to have thereby executed the power, and, therefore, that the legacies were not charged on it, but the decision was reversed. *Lake* v. *Currie.* vol. 15, p. 472
12. Held, by the Master of the Rolls, governed by the case of *Buckell* v. *Blenkhorn* (*5 Hare*, 131), that a will, not sealed but executed according to the formalities of the last Wills Act, was a due execution of a power required to be executed

by writing, under hand and seal. But, held by the L. Js. that the title was too doubtful to force on a purchaser. *Collard* v. *Sampson.* vol. 16, p. 543

13. *A. B.*, having a testamentary power over real estate in favour of his children, devised all the real estates of or to which he was seised or entitled, or of which he had *power* to dispose or to appoint by that his will," on trusts for his children and for other uses exceeding his authority: Held, that the will was an execution of the power. *Banks* v. *Bank.* vol. 17, p. 352

14. *A. B.* had a power of appointing one property amongst her children, by virtue of a settlement of 1799, and of appointing other property amongst her children and their issue, by virtue of her father's will. In 1847 she appointed one-fifth of the second property to one of her five children, and she reserved to herself a power to revoke the deed of 1847 and to make a new appointment. In 1852 *A. B.*, by her will, "by virtue of every power or authority whatsoever," by an indenture, &c. (describing the settlement) given to her, "or otherwise howsoever enabling her," did thereby appoint all her real and personal estate, or which, "under or by virtue of the powers contained in the said indenture of settlement or otherwise, she had power to appoint," between her three surviving children. Held, by the Master of the Rolls, that the testatrix, by her will, had executed the power given by her father's will; and secondly, that she had exercised the power of revocation and new appointment reserved by the deed of 1847; but the Lords Justices were of a different opinion on the second point. *Pomfret* v. *Perring.* vol. 18, p. 618

15. A testatrix gave her residue to *A. B.*, her executor, in trust for such of the children or grandchildren of *X.* as he should think it most acceptable to, &c. The will was contested, and in answer to a letter from his proctor requesting, in the event of his releasing his interest, the names of the persons most interested, or one of them, in order that they might appoint a proctor and make the affidavit of scripts. *A. B.* stated, by name, "the children whom it is desired may benefit," and that he presumed that having thus determined, their father should make affidavits. Held, that this amounted to a valid appointment of the residue. *Bailey* v. *Hughes.* vol. 19, p. 169

16. A tenant for life had a power to appoint to children. By a post-nuptial settlement, to which his married daughter and her husband were parties, he appointed the reversionary interest of stocks to the daughter and her husband and children. Held, that the appointment to the husband and grandchildren was valid. *Re Gosset's Settlement.* vol. 19, p. 529

17. A testator gave his real and personal estate to his wife for life, and afterwards to his two daughters in such proportions as she might direct, and in default, to them equally. Held, that the wife could not appoint the property to such uses as the daughters (who were married) should appoint, so as to enable them to convey the realty without acknowledging the deed under the statute, and to dispose of a reversionary interest in the personalty. *Jebb* v. *Tugwell.* vol. 20, p. 84

18. Under his marriage settlement, *A. B.* had a power of appointing a fund amongst his children. By his will he appointed the fund equally amongst his eight children; but he afterwards postponed the payment of the capital, partly until the majority of the children, and partly until after the death or marriage of his last surviving unmarried daughter, the unmarried daughters being in the meanwhile entitled to the income. The appointment was held valid. *Wilson* v. *Wilson.* vol. 21, p. 25

19. A father having a power to appoint to his children and their issue born in his life, appointed 5,000*l.* to his daughter *O.*, who, on the next day, settled it on herself, her husband and her children generally. Afterwards, by a deed stating the appointment of 5,000*l.* to *O.*, for her separate use, with power to appoint it, the father appointed another fund to *O.* and her children, "upon the trusts and subject to the same provisions as are hereinbefore declared of and concerning the sum of 5,000*l.* hereinbefore appointed unto and for the benefit of *O.*, or as near thereto as circumstances will admit." Held, that *O.* took the second fund for her separate use, with power to appoint it, and that the children took nothing. *Hanbury* v. *Tyrrell.* vol. 21, p. 322

20. Under a power to appoint a sum of money to a daughter, an appointment to her husband is invalid, *semble.* *Ibid.*

21. A *feme covert*, having a limited testamentary power of appointment over personalty, made her will in 1848, whereby, without referring either to her power or to the property subject to it, she professed to dispose "of the property and income I am now or may become possessed of," and she then gave "her property" to her husband and her children. She died in 1854, at which time she had (independently of the property subject to the power) 93*l.* arrears of income and a contingent reversionary interest in some trust moneys. Held, that the will did not operate as an execution of the power. *Evans* v. *Evans.* vol. 23, p. 1

22. A will must be taken to be an execu-

tion of a power, where the words of it would, otherwise, have nothing to operate upon. *Shelford* v. *Acland*. vol. 23, p. 10

23. A *feme covert* had a general power of appointment over some personal estate of the value of about 2,600*l*. By her will, made in 1841, without referring to any power or property, she gave her husband 2,600*l*. There being no other property over which the will could operate, the Court held, that, independently of the 1 *Vict.* c. 26, s. 27, the will operated as an execution *pro tanto* of the power. *Ibid.*

24. A testator had a power of appointment amongst his issue, which did not warrant an exclusive appointment. By will, after reciting that the trust fund had been invested in land, and reciting (erroneously) that he had advanced 300*l*. towards the purchase, he made an exclusive appointment in favour of one of several objects of "300*l*., or such other sum as he was empowered to appoint." The Court, under the circumstances, held, that the intention was either to appoint the fund contributed (which was trifling, if any), or the whole trust fund, and that, in the latter case, the appointment was void. *Robinson* v. *Sykes*. vol. 23, p. 40

25. A testamentary instrument, signed, but invalid for want of attestation, is not a good execution of a power to appoint by writing signed or by will. *Re Daly's Settlement*. vol. 25, p. 456

26. A testator directed his trustees to divide his property "among his first cousins, as they might, in their uncontrolled discretion, think proper, by dividing the whole equally among them or between two or more of them, or giving the whole to any one of them, and for such estate or estates, interest or interests, and with, under and subject to such powers, discretions and limitations as they might think proper, so that the same were in favour of some one or more of his first cousins or their descendants." Held, that the trustees could not appoint to the cousins in unequal shares. *Ward* v. *Tyrrell*. vol. 25, p. 563

27. *A. B.* had a power to appoint "by his will or any writing in the nature of or purporting to be his will, or any codicil thereto." On his death, the third and fourth sheets of a will were alone discovered, and which were in the handwriting of and signed by *A. B.*, and were attested by two witnesses; one of them contained, in words, a perfect appointment. Probate having been refused, Held, that this was not a valid execution of the power to appoint by writing purporting to be a will. *Gullan* v. *Grove*. vol. 26, p. 64

28. Power to appoint to children, "with such directions or regulations for maintenance, education and advancement as their mother should appoint." The mother appointed the income to the children's father until the youngest attained twenty-one, "in or towards the maintenance and education" of all her children. Held, that the appointment was invalid. *Lloyd* v. *Lloyd*. vol. 26, p. 96

29. By the settlement of *A. B.*, and in the events which happened, two-thirds of a fund were limited to certain persons, and three-fifths to the children of *C. D.* "living at the time of the decease of *C. D.*," and in default, to *C. D.*'s next of kin. Power was given to *A. B.* to revoke these trusts, and to appoint the trust fund among the persons who, under the trusts aforesaid, would have become entitled to the funds, "in the proportion and manner aforesaid, or in such manner and form, in all respects, as *A. B.* should think fit." *A. B.* appointed to a child of *C. D.*, who survived *A. B.*, but died in the life of *C. D.* Held, that such child was not an object of the power. *Denning* v. *Ellerton*. vol. 26, p. 231

30. Where an intention is established to pass property which is the subject of a power, a Court of Equity will give effect to the disposition, and hold that the property passes under it, although the intention to dispose of it by means of the power is not shewn. *Carver* v. *Richards*. vol. 27, p. 488

31. A married lady had a power to appoint under a deed of 1807. An invalid and fraudulent deed of 1813 purported to give to her and her husband a joint power of appointment over the same property. They executed the latter power in 1820, reserving a power of revocation and new appointment to the lady. In 1829, after the death of her husband, she professed to execute the power contained in the deed of 1820, and all powers in the deed therein recited, and all other powers enabling her; and she confirmed the appointment of 1820, which was in favour of legitimate objects of the power under the deed of 1807. The deed of 1807 was recited in the deed of 1820. Held, that the deed of 1829 was a valid execution of the power contained in the deed of 1807. *Ibid.*

32. A testator had a power to appoint the produce of a policy on his life amongst his children, by writing or will. By his will he bequeathed all his personal estate to his daughter *F.* By a contemporaneous writing, unattested, and headed "memorandum," he gave directions to *F.* as to his property, and said, "the money from the *Equitable Insurance Office* I would have equally divided between my daughters *F.*, *G.* and *A.*, and it also expressed his wish that his two sons should have certain interests out of his

own property. Held, first, that the testator must be assumed to have known that his will did not operate on the policy fund. Secondly, that the memorandum was an execution of the power. Thirdly, that the words "I would have" were imperative, and not mere instructions to *F.* Fourthly, that *F.*, who was not shewn to have obtained the benefits under the will on the faith of any promise to distribute the testator's property according to the memorandum, was not bound to do so. *Proby* v. *Landor.* vol. 28, p. 504

33. A testator, after reciting that under the settlement in 1819, on his second marriage, he had power to charge 5,000*l.* amongst the children of his second marriage, proceeded to appoint it. The settlement of 1819 contained no such power, but a re-settlement of 1839 contained a power to appoint that sum to his younger children. Held, that the will was a valid execution of the power. *In re Eardley Wilmot.* vol. 29, p. 644

34. Bequest to *A.* or such of her "children," "in such parts, shares and proportions" as *B.* should appoint, and in default to *A.* for life, with remainder to her children equally. Held, to authorize an exclusive appointment to one of several children of *A. Turner* v. *Bryans.* vol. 31, p. 303

35. *A. B.* bequeathed her residue to such person as *C. D.* should, by deed or will, appoint, and in default to his next of kin. *C. D.* died in the life of *A. B.* Held, that his will could not operate as an execution of the power under the 1 *Vict.* c. 26, s. 27, and that his next of kin were entitled to *A. B.*'s residue. *Jones* v. *Southall.* (No. 2.) vol. 32, p. 31

36. *A.* having a power to appoint 1,000*l.* by will, and which in default of appointment was given over to *B.*, duly appointed it to *C.*, who died in the testator's life. He afterwards made a codicil, giving his residue and the dividends due at his death on the 1,000*l.* to his wife. Held, that under the Wills Act, the 1,000*l.* passed to the wife under the residuary gift. *Bush* v. *Cowan.* vol. 32, p. 228

37. Trust money was settled on a married woman for life, for her separate use, without power of anticipation, but with power to her to appoint the capital after her death by deed. The trustees lent part of the trust money to the husband on mortgage, and she consented to the investment by the mortgage deed. Part of the trust money having thereby been lost. Held, that the wife had not, by executing the deed, appointed the reversion, so as to make it liable for the loss. *Fletcher* v. *Green.* vol. 33, p. 426

38. A father, under a power to appoint to his children, appointed a share to a daughter for life, for her separate use, with remainder as she should by will appoint. Held, that this was a good execution of the power. *Morse* v. *Martin.* vol. 34, p. 500

39. The Court aided the defective execution of a power in favour of a daughter, as against her brothers, who, in default of appointment, would participate in the property. *Ibid.*

40. A testatrix bequeathed "all moneys belonging to her in the £3 per Cent. Consols" to two children and her son's widow. The only Consols she was interested in were settled on her for life, with power to appoint amongst her children. Held, that the will operated as an execution of the power as regarded the two-thirds to the two children, although it contained no other reference to the power or to the subject of it. *In re Gratwick's Settlement.* vol. 35, p. 215

41. By a will, dated in 1858, the testator purported to execute all powers. By a subsequent settlement, he settled his property, reserving to himself a power of appointment by his "last will." He afterwards made another will, which he termed his "last will," and he thereby only partially executed the power. Held, that the first will of 1858, though unrevoked, was, in no way, an execution of the power. *Pettinger* v. *Ambler.* vol. 35, p. 321

POWER (FRAUD ON).

1. A father had a power of appointing to any of his children. Having, in breach of trust, obtained possession of part of the trust funds, he, in 1834, appointed that part to his daughters, in exclusion of his son, under an agreement that that part should afterwards be conveyed to him, in exchange for an estate of less value. In 1844 he executed a second appointment, reciting the previous dealing with the fund, and he thereby appointed the remaining portion of the trust property "and all other" the property comprised in the settlement, to his daughters. Held, first, that the first appointment was void; and secondly, that the portion of the property comprised therein was not appointed by the second deed. *Askham* v. *Barker.* vol. 12, p. 499

2. Funds were settled on *A.* for life, with remainder to his children, at such ages, &c. as he should appoint, and in default to them equally, to vest at twenty-one, and there was a power of maintenance until the vesting. There was a gift over, in case there should be no child absolutely entitled. *A.*, having a child eight months old, and another *en ventre sa mère*, appointed the fund to all his children to vest immediately. One of the children survived *A.* and died an infant, and his

share was claimed by his mother as his administrator. Held, that the appointment was not a fraud on the power, and that she was entitled. *Fearon* v. *Desbrisay*. vol. 14, p. 635

3. The donee of a power of selection cannot lawfully exercise his power, in such a manner, as to secure an advantage to himself, by any stipulation or arrangement with the appointees in whose favour the power is exercised. *Askham* v. *Barker*. vol. 17, p. 37

4. The burden of proving the invalidity of an appointment lies on the person who seeks to set it aside; and not only the deed, but the whole matter, and all the accompanying facts, must be examined, in order to ascertain the real nature and character of the transaction. *Ibid.*

5. A tenant for life had the power of appointing the settled property amongst such of his children as he should think fit. The trustees had, in breach of trust, lent him part of the trust moneys, without taking any security. In 1834 the tenant for life appointed to his daughters the money so lent and 500*l.*, in exclusion of his son. Contemporaneously, the daughters exchanged the sum so appointed for an estate of the father, and and the old trustee retired. The transaction was supported, the estate being worth the amount given in exchange. *Ibid.*

6. Distinction between an appointment exceeding the limits of a power and void for the excess only, and one which being a fraud on the power is void altogether. *Agassiz* v. *Squire*. vol. 18, p. 431

7. *A. B.* had a power to appoint a rent-charge in favour of her sons, and a power to appoint policy moneys in favour of her children. On the 13th of *August*, 1838, she appointed the rent-charge to her son *George*, who, on the following day, settled it, not only in favour of himself and other objects of the power, but also of *A. B.*'s husband and others not objects of the power. On the same day, *A. B.* appointed the policy moneys partly in favour of objects of the power and partly in favour of her husband and other persons not such objects. The deed contained a proviso, that if any of the objects should refuse to accede to the arrangements as to the rent-charge and policy moneys, he should forfeit the benefits intended. On the same day, *George* gave a bond to *A. B.*'s husband for securing him a benefit out of the policy moneys. The Court being of opinion that the transaction must be taken as a whole, held it altogether void, both as against the objects of the power and the rest, considering it an entangled transaction to effect a fraudulent execution of the power in favour of persons who were not objects. *Ibid.*

8. *A. B.*, a tenant for life, had a power of appointing a fund amongst her children. There being only one object of the power, *C. D.*, who was a married woman, an arrangement was come to between *A. B.* and *C. D.* and her husband, whereby the whole fund was appointed to *C. D.* and then resettled, giving an interest to *C. D.*'s children and *E. F.*, a stranger. The husband survived. Held, that the transaction was binding on him and his representatives. *Wright* v. *Goff*. vol. 22, p. 207

9. A parent had a power to appoint to children alone. She appointed to two children absolutely. The next year, the appointees settled the property on children and grandchildren of the parent, by a deed reciting, that when the appointment was made it was understood, between the appointor and appointees, that the latter should consider themselves as possessed of the property upon the trusts of the settlement. Held, that the transaction was a fraud on the power and wholly void. *Birley* v. *Birley*. vol. 25, p. 299

10. An absolute appointment was made to an object of a power, under a prior "understanding" between the appointor and appointee, to hold in "trust" for persons, some of whom were objects and some not. Held, that the whole was void. *Ibid.*

11. Appointment to one of several objects of a power, in payment of a debt due to her from the appointor, held void. *Reid* v. *Reid*. vol. 25, p. 469

12. Parents had life interests in a sum of money, with power to appoint it to their children. On the marriage of an infant daughter, by a settlement to which she and her intended husband were parties, the parents appointed the reversionary fund to trustees, on trust for the daughter, the intended husband and children of the marriage. The daughter and her husband survived the parents. Held, that the appointment to the husband and children, though not objects of the original power, was valid, notwithstanding the infancy of the daughter. *Fitzroy* v. *Duke of Richmond*. (No. 2.) vol. 27, p. 190

13. The donee of a power cannot execute it for an object foreign to purposes for which it was intended, and therefore an ordinary power in a marriage settlement of appointment amongst the children cannot be made subservient to the accomplishment of any particular fancies or inclinations which the donee of the power may have as to the profession in life which a child may choose to adopt, nor can it be exercised in such a mode as to prevent a child marrying a particular person. *Lady Mary Topham* v. *The Duke of Portland*. vol. 31, p. 525

POWER OF APPOINTMENT.

1. Bequest, after the death of *A.*, of 2,500*l.*, as *A.* should appoint, with a gift over "of the same" in default, and to be paid with interest from *A.*'s death. *A.* appointed a part to *B.*, and 1,630*l.* to other persons, and directed the said sums to be paid at the decease of *B.*, except the one left to himself, which was to be payable at *A.*'s decease. Held, that the interest on the 1,630*l.* accruing between the death of *A.* and *B.* neither passed to the appointees of that sum, nor to *B.* by implication, but went over, as in default of appointment. *Henderson* v. *Constable.* vol. 5, p. 297
2. Subject to the life estate of her husband, a wife had the absolute power of appointing a trust fund, which, in default of appointment, was limited to her next of kin, and there was a proviso that if the husband became bankrupt the dividends should no longer be paid to him. The wife died first, and appointed the fund to her husband. Held, that he became entitled thereto, absolutely, and had a right at once to have a transfer thereof. *Neale* v. *Hodgson.* vol. 5, p. 159
3. Power to appoint an annuity held, under the circumstances, to authorize the appointment of the principal sum invested in the funds for securing it. *Samuda* v. *Lousada.* vol. 7, p. 243
4. An appointment to one of a class of a part of a fund as "her part, share and proportion," does not prevent her participating in the unappointed fund, limited to the class equally in default of appointment. *Wombwell* v. *Hanrott.* vol. 14, p. 143
5. A lady had a general power of appointing a trust fund by deed or will, and in default, half was limited to *A.* and the other to *B.* By her will, she appointed the fund to her executor and made it chargeable with her debts and some legacies, and she gave half the residue, composed of the appointed fund and her own property, to *A.* *A.* predeceased the testatrix and the bequest to him lapsed. Held, that the moiety of the fund subject to the power, appointed in favour of *A.*, passed to the appointor's next of kin, as part of her estate undisposed of, and not to the executors of *A.* as in default of appointment. *Chamberlain* v. *Hutchinson.* vol. 22, p. 444
6. A testatrix, having a power over a sum of money, appointed it to *A.* and *B.* on certain trusts, and she also gave them on trust her residuary personal estate, after payment of her debts. She made no beneficial bequest of her residue, and appointed two other persons her executors. The trusts declared of the appointed fund did not exhaust it. Held, that the surplus fell into the residue, and did not pass as unappointed. *Lefevre* v. *Freeland.* vol. 24, p. 403
7. Money in Court stood limited to a widow for life, and afterwards as she should by deed or will appoint. The Court directed payment to her, without requiring an appointment. *Cambridge* v. *Rouse.* (No. 2.) vol. 25, p. 574
8. Gift to wife for life, "to be disposed of, at her death, amongst my children as she shall think proper." Held, to confer a power to appoint, by will, amongst his children living at her death, and an implied gift in default of appointment. *Reid* v. *Reid.* vol. 25, p. 469
9. A power to appoint the "interest" of a fund, held to authorize the appointment of the capital, notwithstanding subsequent powers over and limitation of the said "trust moneys" and the interest." *Phillips* v. *Brydon.* vol. 26, p. 77
10. A testator devised an estate upon the same trusts, &c. as his wife, by her will, should declare "with respect to the disposition of her residuary personal estate." The widow bequeathed the estate to *A.*, and her residue to *B.*, *C.* and *D.* Held, that the widow had an absolute, and not a restricted power, and that the estate did not pass with the widow's residue, but belonged to *A.* *Bristow* v. *Skirrow.* (No. 1.) vol. 27, p. 585
11. When a *feme covert* has a general power to appoint property by will, and executes it in favour of a legatee, the appointed property does not (as in the case of a man) become assets for the payment of her debts. But the case is otherwise where the *feme covert* has practised a fraud in her contracts; in such a case the appointed property is liable. *Hobday* v. *Peters.* (No. 2.) vol. 28, p. 354
12. A testator gave his real and personal estate to trustees in trust, but with the consent of his widow, to sell and invest the produce and pay the income therefrom and of his estate unsold to his widow for life, and after her death, he directed that the money to be produced by his estate, "sold before her death," should be in trust for such persons as she should by deed or will appoint. Held, that the widow's power did not extend over real estate not sold during her life. *Cross* v. *Wilks.* vol. 35, p. 562

POWER OF REVOCATION.

1. A deed of appointment, containing a power of revocation and new appointment, must be acted on, although there is evidence of a subsequent appointment having been made, the contents of which it is impossible to ascertain. *Rawlins* v. *Rickards.* vol. 28, p. 370
2. A marriage settlement gave to the parents

a power, with the consent of the trustees, to make void the trusts, and of appointing the estate to new uses. This power was exercised for the purpose or mortgaging the estate to one of the trustees for a sum advanced to the father. The estate was afterwards sold under a power of sale contained in the mortgage deed. Held, that a good title could not be made under it. *Eland* v. *Baker*. vol. 29, p. 137

3. A tenant for life, acting under a power, charged the estate with a sum of 4,000*l*., and he appointed a term of 500 years to secure it. He reserved a power to revoke "the trusts, powers and provisoes" concerning the 4,000*l*. Held, that he could not revoke the term, but only the trusts of the money, and a second appointment by him of a term was held inoperative. *Vyvyan* v. *Vyvyan*. vol. 30, p. 65
4. An appointment was made with a power of revocation. Held, that a subsequent appointment revoked the former, although it made no reference to it. *Ibid*.
5. A voluntary settlement in favour of several persons contained a power authorizing the tenant for life (a volunteer) to revoke the trusts of the property and again resettle the same upon such trusts as to her should seem meet. Held, that this general power could not be controlled, and that an appointment of the property to herself absolutely, to the exclusion of the other persons entitled under the settlement, was a good execution of the power. *Meade King* v. *Warren*. vol. 32, p. 111
6. Injunction to prevent the user of a volunteer rifle range for ball practice, until it had been rendered free from danger. *Banister* v. *Bigge*. vol. 34, p. 287

POWER TO LEASE.

1. A testator desired that his two sons might have "*the use and occupation*" of certain lands, they paying a stated rent, and that in default of payment, or if they converted the arable land into tillage, they should no longer have "possession" thereof. Held, that personal use and occupation was not enjoined, and that they might underlet the property. *Rabbeth* v. *Squire*. (No. 1.) vol. 19, p. 70
2. An estate, with the "mines and minerals," was settled, and power was given to the trustees to demise the hereditaments and the coal and minerals, &c., but so as the lessees should not be "dispunishable for waste." Held, that the last clause was repugnant, and that the trustees might demise mines, both opened and unopened at the date of the settlement. Held, also, that the royalty reserved by the lease was in the nature of rent, and was payable to the tenant for life, and did not form *corpus*. *Daly* v. *Beckett*. vol. 24, p. 114
3. In a settlement of personal property, the parties covenanted to settle all future acquired property upon the same trusts, &c., and subject to the same powers, &c., or as near thereto as the nature and tenure of the property would admit of. Held, that this authorized the insertion of a power to grant mining leases in the settlement of subsequently-acquired freeholds, the prior owner having granted such leases, though the mines had never been effectually worked under them. *Scott* v. *Steward*. vol. 27, p. 367

POWER TO SELL OR MORTGAGE.

[*See* CONSENT.]

1. A trust, "to make sale and dispose of" the testator's real estates, by private sale or public auction. Held, not to authorize a mortgage; there appearing an intention on the part of the testator, that his whole real estate should be converted. *Haldenby* v. *Spofforth*. vol. 1, p. 390
2. Power for executors to sell held not to include a power to purchase. *Peck* v. *Cardwell*. vol. 2, p. 137
3. A mortgage contained a power of sale. The mortgage was transferred, with the benefit of all provisoes, &c. contained therein. The mortgagor concurred and covenanted to pay a different sum on a different day. Held, that the power of sale still existed, and that a good title could be made upon a sale under the power. *Young* v. *Roberts*. vol. 15, p. 558
4. A power to trustees "to sell and dispose of" the testator's real estate and to give receipts, does not authorize a partition. *Brassey* v. *Chalmers*. vol. 16, p. 223
5. Distinction between accelerating powers to charge and powers of sale. *Truell* v. *Tysson*. vol. 21, p. 437
6. A testator being seised of an estate in remainder, subject to the life estate of *A. B.*, devised it to *C. D.* for life, with remainder in strict settlement, and empowered the trustees to sell it, with the consent of the tenant for life "entitled in possession" under his will. *A. B.* surrendered his life estate to *C. D.*, to enable the trustees, with *C. D.*'s consent, to sell. Held, that they could make a a good title. *Ibid*.
7. A power of sale, in a settlement, subsists only for the purposes of that settlement, and during the time when the uses of the settlement are in existence, and when they are all (except a jointure secured by a term) spent, it cannot be exercised. *Wolley* v. *Jenkins*. vol. 23, p. 53.
8. Authority given to insert a power of sale in a mortgage of an infant's real

estate to pay debt and costs. *Selby* v. *Cooling*. vol. 23, p. 418

9. A prohibition against raising a charge by sale held also to prevent its being done by mortgage. *Bennett* v. *Wyndham*. vol. 23, p, 521

10. Devise of real estates to trustees in fee, upon trust, "out of the rents, issues and profits thereof" to pay two annuities, "and by the same ways and means, or by such other ways and means (except a sale or sales) as they may think proper, to levy and raise" sufficient to pay off the charges on the estate. And subject to the trusts aforesaid, to *A*. for life, with remainders over. Held, that the trustees could not raise the charges either by sale, by mortgage, or by leases on fines, but that they must be raised out of the rents and the profits of timber and mines, the trustees exercising a discretion, so as not to exhaust the whole income, and leave nothing for the tenant for life. *Ibid*.

11. A power to raise money by sale or mortgage, held to authorize a mortgage with a power of sale. *Bridges* v. *Longman*. vol. 24, p. 27

12. An estate was devised to trustees for different persons in fifth shares, some of which shares were given to living persons absolutely, and the others to living persons for life, with remainder to their children in fee. An unlimited power of sale over the whole estate was given to the trustees. Held, that this power of sale was valid and could be exercised over the whole estate, so long as any of the trusts of any of the shares remained to be performed. *Taite* v. *Swinstead*. vol. 26, p. 525

13. Under a direction to pay debts, the executors of the original executor sold the testator's real estate twenty-seven years after the testator's death, and nine years after the death of the executor. Held, that a good title could be made under the implied power of sale, and that the vendors were not bound to state whether there existed any debts which made a sale necessary. *Sabin* v. *Heape*. vol. 27, p. 553

14. A settlement of personal estate contained a power to alter and vary, and a covenant to settle future acquired real and personal estate on similar trusts. Held, that a power of sale might be introduced into a settlement of subsequently acquired real estate. *Elton* v. *Elton*. (No. 2.) vol. 27, p. 634

15. Where an absolute purchase is held, in consequence of the relation between the parties, to be available as a security only, the Court will not import into the transaction a power of sale. *Pearson* v. *Benson*. vol. 28, p. 598

16. A testator directed his debts to be paid by his executrix, and he devised his real estate to her for life, with power to mortgage it as far as should be needful for her maintenance and comfort. Held, that the executrix had no power of sale for payment of the debts. *Cook* v. *Dawson*. vol. 29, p. 123

17. It is clearly established, that where there is a general charge of debts on the real estate, an executor has power to sell it for that purpose, and that the purchaser is not bound to see to the application of the purchase-money. *Ibid*.

18. Real estate was devised to *A. B*., in trust to sell, with power to the trustees to give discharges. *A. B*. was to pay the debts and hold the surplus on certain trusts, and he was appointed sole executor. *A. B*. having renounced and disclaimed: Held, that the heir-at-law, who had taken out administration, could sell the estate and give valid receipts. *Austin* v. *Martin*. vol. 29, p. 523

19. A power of sale and exchange does not authorize trustees to sell the lands with a reservation of the minerals. *Buckley* v. *Howell*. vol. 29, p. 546

20. A testator devised freeholds and copyholds to his wife for life, with remainder to trustees in fee, in trust to sell the freeholds "as soon as conveniently might be," and the copyholds "as soon as conveniently might be after his decease." Held, that the absolute interest in the estate might be sold by the trustees in the life of the widow, with her consent. *Mills* v. *Dugmore*. vol. 30, p. 104

21. Pending a suit, and although no decree has been made, it is proper that trustees should obtain the sanction of the Court to their exercise of powers of sale and leasing. *Turner* v. *Turner*. vol. 30, p. 414

22. A testator, "in case his personal estate should be insufficient for the payment of his debts," charged them upon his real estate. Held, that the executor had an implied power to sell and give valid receipts for the purchase-money without shewing the insufficiency of the personal estate. Held, also, that the lapse of thirteen years between the death and the sale did not affect the executor's power. *Greetham* v. *Colton*. vol. 34, p. 615

23. A marriage settlement of personalty empowered the trustees to sell it, and invest the produce in real estate. The estate was to be held on corresponding trusts and to be considered personal estate. There was an express power to sell the securities to be purchased, and to re-invest the produce, from time to time, but no express power to sell the purchased estate. The trustees invested the fund in a real estate. Held, that they had a power of sale over it, and could give good receipts for the purchase-money. *Tait* v. *Lathbury*. vol. 35, p. 112

PRACTICE.

[*See* AMENDMENT, AUTHORITY TO SUE, CHAMBERS, CHIEF CLERK'S CERTIFICATE, CO-DEFENDANT, COSTS, DECREE, FILING BILL, INFANT, IRREGULARITY, JURISDICTION, ORDER OF COURSE, PARTIES, PAYMENT INTO AND OUT OF COURT, PLEADING, PROCESS, REVIVOR, SOLICITOR, STAYING PROCEEDINGS, SUBPŒNA, SUIT, SUMMONS, TIME, WAIVER.]

1. Ignorance of the practice held to be no sufficient ground for restoring the suit, nor the fact that the long vacation had intervened. *Bartlett* v. *Harton.* vol. 17, p. 479
2. The last cause in the paper is no longer privileged. *Flower* v. *Gedye.* vol. 23, p. 449
3. By the Bankruptcy Act (1849), notice of disputing the requisites of bankruptcy must be given "within ten days after rejoinder." Rejoinders having been abolished in equity, the Court, eight weeks after replication, allowed ten days to the Defendants to give the notice which they had previously neglected to do. *Lee* v. *Donnistoun.* vol. 29, p. 465

PRECATORY TRUSTS.

[*See* MAINTENANCE, POWER, TRUST (CREATION OF).]

1. A testator directed his widow to carry on his business, until his youngest child should attain twenty-one; and for that purpose, gave her the "entire use, disposal and management of the capital, stock and effects which should be in, due and owing or belonging to him, in his said trade," at the time of his decease; and he authorized his executors to augment the capital employed therein; the executors renounced, and the widow took out administration. Held, that the specified property of the testator only was liable to the debts contracted by the widow in carrying on the trade. *Cutbush* v. *Cutbush.* vol. 1, p. 184
2. A testator bequeathed to his daughter *A.*, the wife of *B.*, a legacy of 10,000*l.* payable six months after his decease; and he *recommended* his daughter and her husband to settle it, together with such sum of money of the husband as he should choose, for the benefit of *A.* and her children. Held, a trust for the children, and that the legacy did not lapse by the death of *A.* in the lifetime of the testator. *Ford* v. *Fowler.* vol. 3, p. 146
3. Principles of construction, in cases of precatory words in wills, and the requisites to enable the Court to construe them as imperative. *Knight* v. *Knight.* vol. 3, p. 148
4. Where property is given absolutely to one, who is by the donor recommended, entreated, or wished, to dispose of it in favour of another, the words create a trust, if they are such as ought to be construed imperative, and the subject and objects are certain: thus, if a testator gives 1,000*l.* to *A. B.*, desiring, wishing, recommending, or hoping that *A. B.* will, at his death, give the same sum or any certain part to *C. D.*, a trust is created in favour of *C. D.* *Knight* v. *Knight.* vol. 3, p. 148
5. Bequest to *A. B.* of a residue, with a recommendation to him after his death to give it to his own relations, or such of his own relations as he shall think most deserving, or as he shall choose, has been considered sufficiently certain both as to subject and object, to create a trust. *Ibid.*
6. A testator devised his real and personal estate to his wife "absolutely, and at her own disposal, for the maintenance of herself and bringing up of his children." Held, that she could sell the real estate. *Wood* v. *Richardson.* vol. 4, p. 174
7. Testator devised his real estate to his wife, "for her own sole and separate use, to dispose of as she should think proper," and out of his real and personal estate to provide for his children in such manner as to her should seem meet." Held, that the widow had power to sell the real estate. *Pratt* v. *Church.* vol. 4, p. 177
8. Bequest to trustees, to pay the dividends to *A.* and *B.* his wife during their lives, and the life of the survivor; and after their decease, in trust to transfer and pay over unto their children, in such shares and proportions as the survivor of *A.* and *B.* should by will appoint. At the death of the testator there were three children. *A.*, who survived *B.*, appointed the whole fund to an only surviving child. Held, that there was a gift to children subject to the power, but that the objects of the power and of the gift were the children living at the death of the surviving parent, and therefore that the representative of a child who died in the life of *A.* had no interest in the fund. *Woodcock* v. *Renneck.* vol. 4, p. 190
9. A testator gave 150*l.* a year to such of his relations as his widow should deem requiring and most meriting relief. Held, that a widow of the testator's brother was not an object; and the widow having given a portion to such widow, and the remainder to the relations, held, also, that a relative to whom no part had been appropriated, and who did not shew himself to possess the qualification, had no right to question the misappropriation. *Harvey* v. *Harvey.* vol. 5, p. 184
10. *A.* devised to *B.* in tail, and for want of issue of her body "he empowered and authorized" her to settle and dispose of the estate to such persons as she thought fit by her will, "confiding" in her not

to alienate or transfer the estate from his "nearest family." *B.* appointed to her husband for life with remainders over. Held, that *B.* had a power of appointing to the "nearest family" only, that nearest family must be construed "heir," and that consequently the appointment to the husband was void. *Griffiths* v. *Evan.* vol. 5, p. 241

11. By a marriage settlement, a power was given to the wife, in case she left any child of the marriage living at her death, to appoint amongst all and every the children; but if there should be no issue of the marriage living at her death, then she was to have a general power of disposition. She did not exercise the power, and died leaving several children. Held, that those children alone who survived her were entitled to take by implication. *Winn* v. *Fenwick.* vol. 11, p. 438

12. A testator duly appointed a fund in favour of objects of the power absolutely, and he also bequeathed to them his own property, "especially requesting them" to leave the appointed fund to persons not objects of the power. Held, that this did not raise a case for election. Held, also, that the result would have been different, if there had been a direct appointment of the subject of the power to strangers. *Blacket* v. *Lamb.* vol. 14, p. 482

13. A testator gave all his real and personal property to his widow, her heirs, &c. "absolutely, and for ever, in the full assurance and confident hope" that she would bring up, educate and provide for his children, as it would have been his intention if living. Held, that though the words "full assurance and confident hope" would create a precatory trust, yet the trusts were too obscure to carry into effect, and that the widow took absolutely. *Macnab* v. *Whitbread.* vol. 17, p. 299

14. The testator gave his wife 4,000*l.* "to be used for her own and the children's benefit, as she shall in her judgment and conscience think fit, being convinced that it will be disposed of conscientiously and properly by her, for the purposes mentioned; at the same time recommending her not to diminish the principal, but to vest it in government or freehold securities." Held, that this was a gift to the wife for life, to be employed, in such manner as she should think fit, for the benefit of herself and the children, she fairly and honestly exercising that discretion; and that, subject to such life estate, the children took an interest in the capital. *Hart* v. *Tribe.* vol. 18, p. 215

15. A testator gave all the residue of his property to his wife, "her heirs and assigns for ever, being fully satisfied that she would dispose of it, by will or otherwise, in a fair and equitable manner, to their united relatives, bearing in mind that his relatives were generally in better circumstances than hers." Held, that no precatory trust was created. *Reeves* v. *Baker.* vol. 18, p. 372

16. A domiciled Englishman made his will in a Spanish colony, in the Spanish language and form, and empowered *K.*, whom he appointed his universal heir, to make his (the testator's) will, making therein the declaration, &c., and other matters which had been, and would be, communicated to him. The will was admitted to probate. Held, first, that the will was an English will, and that in construing it the Spanish language was only to be looked to in order to ascertain the equivalent expressions in English; and secondly, that *K.* being appointed universal heir, the beneficial interest, after performing the trusts, if any there were, belonging to *K.*, and not the testator's next of kin. *Reynolds* v. *Kortright.* vol. 18, p. 417

17. A testator constituted his widow guardian of his two children then living with him (one, a boy, being the child of another woman), and he gave her 4,000*l.* "to be used for her own and the children's benefit, as she should, in her judgment and conscience, think fit." This (as was held) gave the widow a discretion as to the application of the income between the three objects, which this Court would not control, if *bonâ fide* exercised. Soon after the testator's death, the maternal relations of the boy removed him from the widow's custody. The widow married again, and appointed one-eighth of the capital to the boy and the remainder to her own child. The Court, notwithstanding the opposition of the widow, and who offered to take the boy back, directed 30*l.* a year to be allowed, out of the income of the 4,000*l.*, for his education. *Hart* v. *Tribe.* vol. 19, p. 149

18. The testator gave his residuary real and personal estate to his widow, "to and for her own sole use and benefit for ever, feeling assured and having every confidence that she will hereafter dispose of the same fairly, justly and equitably amongst my two daughters and their children," and he appointed her sole executrix and residuary legatee. Held, that the widow took beneficially for life, with remainder to the two daughters and their children, as she should appoint; but the Court refrained from declaring how the property would devolve in default of appointment. *Gulley* v. *Cregoe.* vol. 24, p. 185

19. A testator bequeathed a sum to trustees for his daughter for life, and afterwards to pay the dividends to her husband, "during his life, nevertheless to be by him applied for or towards the mainte-

nance, education or benefit" of the daughter's children. There was a gift to the children after the decease of the survivor of the daughter and her husband. Held, that the husband took for life beneficially. *Byne* v. *Blackburn*. vol. 26, p. 41

20. A testator devised and bequeathed his real and personal estate to his widow, "to and for her own use and benefit absolutely, having full confidence in her sufficient and judicious provision for my dear children." Held, that there was no trust in favour of the children. *Fox* v. *Fox*. vol. 27, p. 301

21. A testator referring to his daughter in his will said, "should she follow the paths of virtue and obedience to the wishes of my dear wife and my executors, they may give her, by instalments when they think proper, the sum of 200*l*." The executors disclaimed. Held, that the daughter was entitled to the payment of 200*l*. *Maud* v. *Maud*. vol. 27, p. 615

22. A testator gave his executors full power to sell his ships by public or private sale, to sell under mortgage by private valuation to any party holding shares with him therein, if they should be desirous of purchasing the same. Held, that this was a discretionary power, and conferred no benefit on the part owners. *Brown* v. *Gellathley*. vol. 31, p. 243

23. A testator gave the residue of his personal estate to his wife, "for her own absolute use and benefit, in the fullest confidence that she would dispose of the same for the benefit of her children, according to the best exercise of her judgment and as family circumstances might require at her hands." Held, that the widow was entitled for life, with a precatory trust in remainder in favour of her children. *Shovelton* v. *Shovelton*. vol. 32, p. 143

24. A testator bequeathed a legacy to his widow, "to be used for her own and the children's benefit, as she shall in her judgment and conscience think fit, being convinced that it will be disposed of conscientiously and properly by her for the purposes mentioned, recommending her not to diminish the principal." The widow appointed the capital between the children very unequally. The Court (one child opposing) refused to part with the fund or to declare the right during the life of the widow. *Hart* v. *Tribe*. (No. 4.) vol. 32, p. 279

25. Bequest to a widow "to be applied by her for the payment of my lawful debts, and the residue for her own use and benefit and that of our infant daughter." Held, that this was not a discretionary trust, but that they were equally entitled. *Bibby* v. *Thompson*. (No. 1.) vol. 32, p. 646

26. A testator devised an estate to his son in fee, and in case of his death without issue male, it was his anxious desire that he would so settle the estate and all other his estates, that the same might continue in the name of *Oglander*. There was no penalty or gift over. Held, that the son was owner in fee of the estate, and might deal with it as he pleased. *Hood* v. *Oglander*. vol. 34, p. 513

27. Bequest of the principal and interest of one-third of the residue to a widow "being well assured that she will husband the means that may be left to her by me with every prudence and care, for the sake of herself and children." Held, that this raised no precatory trust, and that the widow took absolutely. *Scott* v. *Key*. vol. 35, p. 291

PRE-EMPTION.

[*See* OPTION.]

1. A right of pre-emption held limited to the life of the owner of the property. *Stocker* v. *Dean*. vol. 16, p. 161

2. *Semble*, that a right of pre-emption "at all times thereafter," cannot be enforced after the death of the owner of the property. *Ibid.*

3. A testator directed his trustees to give to *A. B.* the option of purchasing his *Lancashire* estates at the price mentioned in his conveyance, but the offer was to be considered declined unless accepted within a month from the offer being made. Held, that no valid offer was made until the price had been stated to *A. B.* *Lord Lilford* v. *Powys Keck*. (No. 1.) vol. 30, p. 295

4. By partnership articles between *A.*, *B.* and *C.*, it was agreed, that upon the sale by a partner of his share in a mining concern, his co-partners should have a right of pre-emption. *A.* gave to *B.* notice of his intention to sell, after which *B.* became a lunatic, and the option not having been exercised for some time, *A.* sold to *C.* Held, that *B.*'s right of pre-emption was lost. *Rowlands* v. *Evans*; *Williams* v. *Rowlands*. vol. 30, p. 302

5. A testator had granted to the Plaintiff the right of pre-emption of an estate which he had previously devised to an infant. The Plaintiff exercised his option after the testator's death and filed his bill against the infant and executor for specific performance. The Court gave no costs against the Defendants. *Hale* v. *Bushill*. vol. 35, p. 343

PREFERENCE SHARES.

[*See* SHAREHOLDER.]

PRELIMINARY INQUIRIES.

1. Bill by assignee of a trust fund to obtain payment. The trustees having stated they were ignorant as to the execution of the assignment the Plaintiff moved, under the General Orders, for a preliminary inquiry as to that fact. Held, that the case was not within the Order. *Frost* v. *Hamilton.* vol. 4, p. 33
2. Preliminary inquiries had been directed; the sole Plaintiff died before the report, and before decree. Held, that a Defendant might file a supplemental bill to have the benefit of these inquiries. *Upjohn* v. *Upjohn.* vol. 4, p. 246
3. Where the substantial equity of a Plaintiff's bill is denied by the answer, the Court will not, on motion, direct the preliminary inquiries, under the General Orders. *Belcher* v. *Whitmore.* vol. 7, p. 245
4. A bill was filed to set aside a voluntary settlement, on the ground of the insolvency of the settlor; the insolvency being denied by the answer, the Court declined ordering, on motion, the preliminary inquiries as to the parties interested under the settlement. *Ibid.*
5. The preliminary accounts of the testator's estate, debts, &c. being directed upon motion, it was ordered that the creditors who should not come in should be excluded the benefit of the order. *Trotter* v. *Walmesley.* vol. 7, p. 264
6. A preliminary inquiry, under the 5th General Order of *May*, 1839, as to who was next of kin, was refused, where the Plaintiff sued in his right of next of kin; but it was denied by the answer that he filled that character. *Kinshela* v. *Lee.* vol. 7, p. 300
7. An order was made directing preliminary inquiries, and for the production of the necessary papers. Subsequently, an order was made for an inspection of all papers in the Defendant's possession at his solicitor's office. Held, that the latter did not supersede the former, and that the Master might still order a production in the course of the inquiries directed. *Whicker* v. *Hume.* vol. 9, p. 418

PREROGATIVE.

1. *A. B.* being entitled to a fund in court, died, and administration was granted to a person, as "the natural and lawful sister" of *A. B.* It appearing from the proceedings in the cause that *A. B.* was illegitimate, the Court refused to pay the fund to the administratrix, but directed it to be carried over to a separate account, with directions that it should not be paid out of court without notice to the Crown. *Long* v. *Wakeling.* vol. 1, p. 400
2. The Crown might, before the abolition of the Equity Exchequer, have proceeded on the Equity side in respect of a legal right, and may now proceed in the same way in Chancery. *The Attorney-General* v. *The Corporation of London.* vol. 8, p. 270
3. Inalienable estates tail are within the 7th section of the Lands Clauses Consolidation Act (8 & 9 *Vict.* c. 18), and may, under that statute be conveyed by the tenant in tail in possession; but that statute does not extend to the Crown, for the King not being specially named therein, the rights of the Crown are unaffected thereby. *In re Cuckfield Burial Board. Ex parte the Earl of Abergavenny.* vol. 19, p. 153
4. This Court will enforce, for the benefit of the Crown, a trust of real estate created in favour of an alien. The devise being valid, and there being a *cestui que trust* who can take, but not hold, the Crown becomes entitled beneficially, and not the trustee or heir at law. *Barrow* v. *Wadkin.* vol. 24, p. 1

PRESENTATION.

[*See* ADVOWSON, PATRONAGE.]

PRESUMPTION.

[*See* SPOLIATION.]

1. Presumption arising in favour of defendants from long lapse of time during which their title was unquestioned. *Attorney-General* v. *Fishmongers' Company.* vol. 2, p. 588
2. *A. B.*, a widow entitled to a pension *durante viduitate*, cohabited with *C. D.* in *Scotland.* In regard to society, they held themselves out as man and wife; but with respect to the pension, they acted as if they were unmarried, and *A. B.* half-yearly made solemn declarations of widowhood for the purpose of obtaining the pension. Held, on exceptions to the Master's report, that, on the whole, he was right in finding that no valid marriage had taken place. *Robertson* v. *Crawford.* vol. 3, p. 102
3. After a long possession, the Court will make great presumptions, including, in some cases, even an Act of Parliament, in order to protect right. The Court will not, however, adopt such presumption, when the origin of the right or possession is ascertained and negatives such presumption. *Attorney-General* v. *Ewelme Hospital.* vol. 7, p. 366
4. In 1846 an issue was directed to try whether a will dated in 1825 had been signed and published in the presence of three credible witnesses, *A.*, *B.* and *C.*, and whether it was attested by them. *A.* was dead, and his signature was proved.

B. denied having signed the will, but was disbelieved by the judge and jury, and *C.*, an ignorant man, proved his attestation, but did not remember the signing or publication by the testatrix. The jury found for the will. The Court, under the circumstances, refused with costs an application for a new trial. *Hitch* v. *Wells.* vol. 10, p. 84

5. A tenant for life of a fund in Court was transported in 1838, and had not since been heard of. Upon an application made in 1852 by the remmaindermen for payment, the Court would only direct payment of the dividends to them, and required an undertaking to replace the amount out of the capital if the tenant for life should be still alive. *In re Mileham's Trust.* vol. 15, p. 507

6. A legacy was given, conditional on a marriage with the consent of trustees. The marriage took place in 1825, and the party entitled in default never raised any question as to the consent having been given until 1852, after the death of the trustees and of *A. B.* Held, that everything was to be presumed in favour of the consent; and though there was no distinct proof of consent, yet it was presumed from the conduct of the trustees subsequent to the marriage. *Re Adrian Birch.* vol. 17, p. 358

7. When husband and wife perish by the same calamity, and there is no evidence to the contrary, the law presumes no survivorship. Husband and wife were swept into the sea by the same wave and were never afterwards seen. The Court, rejecting all speculations and presumptions arising from the relative strength, sex, &c. of the parties, Held, that there was no evidence to shew which was the survivor, and that therefore they must be taken to have died at the same time. *Underwood* v. *Wing.* vol. 19, p. 459

8. A female aged fifty-six was absolutely entitled to a fund, subject to the contingency of her having children. Payment was ordered on her own recognizances. *Liddon* v. *Ellison.* vol. 19, p. 565

9. The Court, acting on the improbability of a lady in her fifty-eighth year having future issue, distributed the fund. *Edwards* v. *Tuck.* vol. 23, p. 268

10. A sailor, who left *England* in 1845, on the Arctic Expedition with *Sir John Franklin*, and who had not been heard of since *June*, 1845, was presumed, in 1856, under particular circumstances, to have survived the month of *January*, 1850. *Ommaney* v. *Stiwell.* vol. 23, p. 328

11. There is a presumption against persons who keep back a document, and against whom the evidence is to be taken most strongly. *Attorney-General* v. *Dean and Canons of Windsor.* vol. 24, p. 679

12. A deed of 1559 presumed, under the circumstances, to have been executed by Queen *Elizabeth.* *Attorney-General* v. *Dean and Canons of Windsor.* vol. 24, p. 679

13. Presumption of legitimacy, under the circumstances, of a person named in a will of 1776 as the testator's son. *Attorney-General* v. *Boucherett.* vol. 25, p. 116

14. In 1586 property was, in consideration of 273*l.*, demised for 2,000 years at a small rent, and the lessor covenanted, if required by the lessees within seven years, to convey the fee to the lessees without further payment. In documents dated in 1664, 1681 and 1690, the property was treated by the persons claiming under the lessees as held in fee simple. But in documents dated in 1715 and 1758, it was considered doubtful whether it was freehold or leasehold, and in 1777 and 1778 it was treated as leasehold. Held, that the presumption up to 1715 was, that it was fee simple; that such presumption was not destroyed by the subsequent doubts, and a purchaser in 1859 of the fee was held bound to take the title. *Jeffereys* v. *Machu.* vol. 29, p. 344

15. Interest and an annuity payable by a brother to a sister presumed, after a long interval, to have been satisfied, she having lived with and been maintained and clothed by her brother. *Shadbolt* v. *Vanderplank.* vol. 29, p. 405

16. *J. R. T.*, a young sailor, was last seen in the Summer of 1840 going to *Portsmouth* to embark. His grandmother died in *March*, 1841. It was presumed that he was the survivor. *Re Tindall's Trust.* vol. 30, p. 151

17. A testator and two of the legatees in his will perished in a ship, which was supposed to have foundered. There being no evidence of survivorship. Held, that the bequest failed. *Barnett* v. *Tugwell.* vol. 31, p. 232

18. A sailor left his ship at the end of the year 1849 or very early in 1850, and had not since been heard of. Held, that, if he was shewn to have intended to desert, it could not be presumed that he was dead in *May*, 1850; but that if he intended to return to his ship, then the Court would assume that he had met with an accident, by which he perished a very short time after leaving the vessel and before *May*, 1850. *Lakin* v. *Lakin.* vol. 34, p. 443

PRINCIPAL AND AGENT.

[*See* FRAUD, SOLICITOR AND CLIENT, ULTRA VIRES.]

1. Fraudulent accounts between a principal and factor opened from the beginning, the Court holding that the relief ought not under such circumstances, to be limited to a right to surcharge and falsify. *Clarke* v. *Tipping.* vol. 9, p. 284

2. If a principal act on a contract entered into by his agent beyond his authority, he cannot afterwards dispute his agent's authority to enter into it. *Lord James Stuart* v. *London and North-Western Railway Company*. vol. 15, p. 513
3. A projected railway company entered into a contract to purchase by their agent. Held, that they were bound, on afterwards obtaining their act. *Ibid.*
4. *A. B.* was authorized by the Defendant to make a proposal of sale of some land to the Plaintiff, but to be accepted within a week. The Plaintiff wrote to *A. B.* within that time, accepting the offer, but *A. B.* did not communicate the acceptance to the Defendant until long after. Held, that there was a valid contract, which was not destroyed by the neglect of *A. B.* to communicate the acceptance to the Defendant. *Wright* v. *Bigg*. vol. 15, p. 592
5. A decree made with costs against a land agent and receiver after his discharge, for the delivery up of all documents relating to the estate and its management. *Lady Beresford* v. *Driver*. vol. 16, p. 134
6. A power to a land agent to "manage and superintend estates," authorizes him, on behalf of his principal, to enter into an agreement for the usual and customary leases, according to the nature and locality of the property. *Peers* v. *Sneyd*. vol. 17, p. 151
7. An agent employed to purchase cannot buy his own goods for his principal, neither can an agent, employed to sell, purchase for himself his principal's goods. Principals may either repudiate such transactions altogether, or adopt and take the benefit of them. *Bentley* v. *Craven*. vol. 18, p. 75
8. The same rule applies to the case of trustee and *cestui que trust* and to other relations, and even though the transaction be perfectly *bonâ fide*. *Ibid.*
9. If an agent, by his own conduct, makes it impossible to ascertain the amount of profit realized, he will be disallowed the commission, which otherwise and according to the contract, he would be entitled to claim. *Gray* v. *Haig; Haig* v. *Gray*. vol. 20, p. 219
10. The Plaintiffs appointed the Defendant their agent for the sale of spirits at a commission. The Defendant had made profits by the sale of the Plaintiff's goods for which he had not given credit; he had also made profits by selling his own spirits mixed with those of his principals, and he had destroyed books of account pending the litigation. The Court disallowed him, in taking the accounts, 7,000*l.*, the amount of commission, which, by the contract, he would have been entitled to if his conduct had been proper. *Ibid.*
11. A charge made by an agent for the sale of goods against his principal for an allowance in respect of warehouseman's salary disallowed, no such claim having been made in the accounts for fourteen years. *Gray* v. *Haig*; *Haig* v. *Gray*. vol. 20, p. 219
12. The Court deals severely with any irregularities on the part of an agent, and requires him to act strictly in all matters relating to such agency, for the benefit of his principal. *Ibid.*
13. It is imperative upon an agent to preserve correct accounts of all his dealings and transactions; and the loss, and still more the destruction, of such evidence by the agent, falls most heavily upon himself. *Ibid.*
14. An agent is bound to act in the best manner he can for his principal, and, in matters which are left to an agent's discretion, he can only act for the benefit of his principal. *Pariente* v. *Lubbock*. vol. 20, p. 588
15. A foreign merchant directed his correspondent in *England* to treat any consignment as his son's (who was in *England* and superintended the sales and purchases), and to acknowledge him owner of the money, so that he might dispose thereof as if it was his own money. By the direction of the son, moneys in the hands of the correspondent, belonging to the father, were applied by him in paying a private debt of the son to the correspondent. Held (overruling the decision of the Master), that the transaction was valid. *Ibid.*
16. A steward has no general authority to enter into contracts for granting leases of farms for a term of years; and therefore, where a steward and land agent, whose powers were specially limited, had, in the name of the owner, entered into a written agreement with a farmer, to grant him a lease for twelve years, but without communicating to him the fact that his power was specially limited: it was held, that the agreement did not bind the owner. *Collen* v. *Gardner*. vol. 21, p. 540
17. Where a general authority is given to an agent, this implies a right to do all subordinate acts incident to and necessary for the execution of that authority, and if notice be not given that the authority is specially limited, the principal is bound. *Ibid.*
18. Observations as to the necessity of an agent preserving his vouchers. *Stainton* v. *Carron Company*. vol. 24, p. 346
19. Distinction between the cases where the business of a company is conducted by a mere agent, and where it is managed by a shareholder, who is a *quasi* co-partner. *Ibid.*
20. Though an agent cannot delegate his authority, yet there are many acts which

he must necessarily do through the agency of other persons, and which are valid when so done. *Rossiter* v. *The Trafalgar Life Assurance Association.* vol. 27, p. 377

21. The extent and nature of the authority of an agent may be defined by writing, by oral instruction, or by the course of dealings between the parties. *Pole* v. *Leask; Leask* v. *Pole.* vol. 28, p. 562

22. Where an express authority is given, an authority is implied combined with it, to do all acts which may be necessary for the purpose of effecting the object for which the express authority is given. *Ibid.*

23. A general parol authority may be enlarged by parol, or even an additional authority superadded to it, by the employment of the parties, known to and acquiesced by them. For instance, a merchant may authorize a clerk to accept or indorse bills of exchange for him; but this will not, of itself, authorize his paying or receiving money due on such bills. But if, in the course of his employment, the clerk has, with the knowledge of the merchant, been allowed to do so, this will constitute a sufficient authority for that purpose, and will discharge the holders of the bills. *Ibid.*

24. An agent, employed to negotiate and conclude contracts, is not thereby authorized to pay or receive money which becomes due under such contracts, but the course of employment may justify the agent in so paying or receiving the money, if known to the principal and not objected to by him. *Ibid.*

25. The Plaintiffs, Messrs. *P.*, authorized *L.*, a fruit and colonial broker, to purchase and sell goods for them upon instructions to be given by *A.*, their agent. The Plaintiffs insisted that the authority to *A.* was limited to one article, namely, currants, but *L.* insisted that the authority was general. The authority being by parol only, and there being a conflict of evidence, the Court, from the practice and conduct of the parties, came to the conclusion, that the authority of *A.*, was general; that it extended to all such articles as the broker was in the habit of dealing in, and that it authorized *A.* to settle accounts with the broker and receive the balance due in respect of the transactions. *Ibid.*

26. *A.*, a contractor for works on a railway, employed *B.*, as his agent, to get a subcontractor to do a portion of the works. *B.* as agent accordingly entered into a contract with *C.* An allowance of 5*l.* per cent. was made by *C.* to *B.* After the work had been finished, *A.* filed a bill against *B.* and *C.* to recover back the commission. Held, that the bill could not be sustained as against *C.*, and it was also dismissed against *B.* without costs, on the ground that such an allowance was usual, and that the Plaintiff was proved to have acted on it, and must have known what had occurred. *Holden* v. *Webber.* vol. 29, p. 117

27. An agent, who managed the money matters and investments of his principal, rendered accounts charging interest on the mortgages as received, and representing that there were no arrears. He also paid over the balances appearing due on such accounts. Held, that the agent could not, on the death of the principal, charge his estate with the interest, on the plea that it had not been actually received from the mortgagors, but had been advanced by the agent to the principal for his accommodation. He was, however, allowed to use the name of the representatives of the principal to recover what might be due from the mortgagors on giving an indemnity. *Owens* v. *Kirby.* vol. 30, p. 31

28. The bare relation of principal and agent does not entitle the principal to come into equity for an account, if the matter can be fairly tried at law. *Barry* v. *Stevens.* vol. 31, p. 258

29. A bill to set aside a purchase of property by an agent dismissed with costs, it being proved that the Plaintiff had distinct notice, at the time, that the agent was one of the beneficial purchasers, and the vendor not having instituted a suit for six years. *Wentworth* v. *Lloyd.* vol. 32, p. 467

30. On questions as to the extent of the authority of an agent, the same rules of law and equity apply to boards and public companies as individuals. *Thorn* v. *The Commissioners of H. M. Works and Public Buildings.* vol. 32, p. 490

31. Sale by a retired solicitor to his agent of property at a distance, which had been proposed and pressed by the vendor and completed without any compulsion or fraud, set aside, it appearing to the Court, that the consideration (a life annuity) was inadequate, that the vendor, who had not seen the property for twenty years, was ignorant of its value, and that the vendor was known to be in a precarious state of health. *Dally* v. *Wonham.* vol. 33, p. 154

PRINCIPAL AND SURETY.

[*See* SURETY.]

PRIORITY.

[*See* ORDER OF ASSETS, PRIORITY OF CHARGES.]

PRIORITY OF CHARGES.

[*See* ADMINISTRATION, EXONERATION, JUDGMENT, MERGER OF CHARGE, MORTGAGE, MORTGAGE (FURTHER ADVANCES), NOTICE, REGISTRATION ACT, STOP ORDER.]

1. A party entitled to an estate, subject to terms vested in trustees for securing a jointure and portions, mortgaged it; but retained the title-deeds in his possession. Held, that this omission, on the part of the mortgagee, was not sufficient to postpone him, in favour of a subsequent purchaser for valuable consideration. *Farrow* v. *Rees.* vol. 4, p. 18
2. *A. B.* was entitled to a legacy, which was charged on real estates devised to *C. D.* *A. B.* by a deed to which *C. D.* was a party, and which recited that it had been agreed that the legacy should remain on the security of the estate, assigned it to *E. F.* *A. B.*, without the concurrence of *E. F.*, afterwards released the charge upon the estate, and *A. B.* and *C. D.* together afterwards mortgaged the estates, first to Lord *C.*, and afterwards to the Plaintiff, a judgment creditor, who released his judgment. Held, that the Plaintiff had priority over *E. F.* *Greenwood* v. *Churchill.* vol. 6, p. 314
3. In 1829 *A.* was admitted to a copyhold, and in 1832 he deposited the copy of his admission with *B.* as a security. In 1837 *A.*'s heir, after admission, attempted to sell the property without effect. *C.* acted therein as his attorney, and *D.* as the clerk of *C.* On the 20th of *July*, 1837, *A.*'s heir mortgaged the property to *C.* by deposit of his own admission. In this transaction *D.* acted as the agent and clerk of *C.*, and as the agent of the heir. It appeared that in *November*, 1835, *D.* had notice of *B.*'s incumbrance, and that on the 19th of *July*, 1837, *D.* knew that the produce of the sale was to be applied in discharge of *B.*'s demand. Held, that the knowledge which *D.* possessed in *November*, 1835, could not be imputed to *C.* in 1837. Secondly, that *D.*'s knowledge in *July*, 1837, that the proceeds of the sale were to be applied in discharge of *B.*'s demand, did not clearly shew that even he, at that time, recollected or knew that which he had known in *November*, 1835; and, thirdly, *semble*, that *C.* who knew that the party from whom he took it had been admitted only as heir, and that the ancestor had been admitted under copy of Court Roll, dated in 1829, must be deemed that the ancestor, having the copy of Court Roll, might have created an equitable mortgage by deposit, and consequently that *C.* ought to have required its production before he advanced his money. *Tylee* v. *Webb.* vol. 6, p. 552
4. *A.* executed a mortgage to *B.* for 1,000*l.* This was not acted on, but *A.* afterwards executed another mortgage for 2,000*l.* to *B.* The solicitor employed retained the first deed, and afterwards fraudulently induced *B.*, without consideration, to sign a memorandum, undertaking to transfer the first mortgage to *C.*, and he executed such transfer. *C.* on the faith of *B.*'s acts, advanced 1,000*l.*, which was received by the solicitor and misapplied. Held, that *B.* must be postponed to *C.* *Hiorns* v. *Holtom.* vol. 16, p. 259
5. To postpone a first mortgagee on the ground of his leaving the title-deeds in the hands of the mortgagor, there must be a distinct, voluntary and unjustifiable concurrence, on the part of the mortgagee, in the mortgagor's retaining them. *Finch* v. *Shaw*; *Colyer* v. *Finch.* vol. 19, p. 500
6. Parts of lands charged with debts and legacies were mortgaged by the devisee, who was also one of two executors. He afterwards sold that part, ostensibly to pay the legacies, and he and the co-executor conveyed it to the purchaser. Held, that, as between the devisee and mortgagee, the latter had an equity to throw the legacies on the portion not mortgaged, and that, as between the mortgagee and purchaser, the latter not having obtained the legal estate, was subject to the same equity as his vendor. *Ibid.*
7. By the same will were given a rent-charge for life to *A. B.*, a rent-charge to the tenant in tail during his minority, and a power to the tenant for life for jointure. The power was exercised, and the jointure was secured by a term and powers of distress and entry. Held, upon a deficiency of income, that the three charges were payable *pari passu*. *Coore* v. *Todd.* vol. 23, p. 92
8. A sum was due from the Plaintiffs to a contractor, which he had mortgaged successively to *A. B.*, *C. D.* and others. By arrangement between the mortgagees, the fund was assigned to *C. D.*, upon trust to distribute it amongst them. At the date of the assignment, *C. D.* had a charge on *A. B.*'s mortgage, but which was not noticed in the assignment. *A. B.* afterwards assigned his mortgage to *E. F.*, who had no notice of *C. D.*'s charge on it. Held, that *C. D.* was to be postponed to *E. F.* in consequence of *E. F.*'s neglect to have his claim noticed in the trust deed. *The Commissioners of her Majesty's Works and Public Buildings, and The Battersea Park Commissioners* v. *Harby.* vol. 23, p. 508
9. Sir *G. B.*, being tenant for life in possession, and also absolutely entitled in remainder, after the death of his mother, to a sum of 9,560*l.*, which was the first

charge on the estate, granted an annuity secured on his life estate, and by the grant he covenanted against all charges whatever. After the death of his mother, Held, as against Sir *G. B.*, that the annuity had priority over the interest of the 9,560*l.*, but that it was not a charge on the *corpus* of that fund for interest paid on it after the death of his mother to the detriment of the annuitant: held, also, that the same equity affected both a purchaser from Sir *George* with notice of the annuity and also volunteer under such purchaser. *Knight* v. *Bowyer*. vol. 23, p. 609

10. To constitute a good equitable mortgage it is not necessary that the deeds deposited should shew a good title in the depositor. *Roberts* v. *Croft*. vol. 24, p. 223

11. A solicitor made an equitable deposit of the title-deeds of his estate to a client, omitting the conveyance to himself. He afterwards deposited the latter, as a security, with his bankers. Held, that the client had priority over the bankers. *Ibid.*

12. Where a contest existed between equitable mortgagees as to priority, and a question arose whether the one who had the title-deeds would be bound to give them up, the difficulty was removed by ordering a sale, and all parties to concur therein, reserving the rights of the parties as against the purchase-money. *Langstaff* v. *Nicholson*. vol. 25, p. 160

13. A first mortgagee allowed the title-deeds to remain in the possession of the mortgagor to enable him to give another limited security. The mortgagor then made several mortgages beyond the one contemplated, these mortgagees having no notice of the first mortgage. Held, that the first mortgagee must be postponed to them, and that notice of the first charge ought to have been indorsed on the purchase deed. *Perry Herrick* v. *Attwood*. vol. 25, p. 205

14. Mortgagee by demise postponed for allowing the mortgagor to retain the title-deeds. *Ibid.*

15. In 1829 *H. de C.* secured an annuity on trust funds, and in 1841 he, for valuable consideration, assigned his interest in the same funds in trust to raise 1,100*l.*, and redeem the annuity, and hold the residue on trusts for his family. The trustees accordingly raised the 1,100*l.* by mortgage and redeemed the annuity, and the trust funds were assigned to the mortgagee, but no transfer was made of the annuity. The mortgage deed stated the consideration to have been "for the repurchase and extinction of the annuity." The annuity had originally priority over certain claimants, but the deed of 1841 had not. Held, that to the extent of the moneys paid for the repurchase of the annuity, the mortgagees had priority over those claimants. *Irby* v. *Irby*. vol. 25, p. 632

16. *A.* mortgaged property to *B.*, and he delivered to him a parcel of deeds, falsely representing them to be the title-deeds of the property. *B.* never examined the parcel, and *A.* afterwards sold and conveyed the property to *C.*, and delivered over to him the title-deeds, which he had thus fraudulently retained. Held, that the negligence of *B.*, in not examining the parcel, and thus enabling *A.*, by retaining the deeds to defraud *C.*, was not a sufficient ground for postponing *B.* to *C.* *Hunt* v. *Elmes*. (No. 2.) vol. 28, p. 631

17. One of the residuary legatees mortgaged his share, after which, a debt of the legatee for which the testator was surety was paid out of his estate. Held, that the lien of the executors had priority over the mortgage. *Willes* v. *Greenhill*. (No. 1.) vol. 29, p. 376

18. The wife of *A.* was entitled for her separate use to a share in a reversionary fund vested in *A.* and three other trustees. *A.* and his wife mortgaged it first to *B.*, who gave formal notice to *A.* alone as trustee. They mortgaged it secondly to *T.*, who gave no notice, and thirdly to *S.*, who gave notice to all the trustees. Held (on that assumption), that *B.*'s mortgage was the first incumbrance, *S.* the second, and *T.* the last. But *T.* having afterwards proved that he had given notice to the solicitor of the trustees, who said he believed he had communicated it to them: Held (on that assumption), that the several mortgages ranked in priority according to their respective dates. *Willes* v. *Greenhill*. (No. 2.) vol. 29, p. 387

19. *A.* granted *B.* a lease, in which, by error, the rental was stated to be 130*l.* instead of 230*l.* *B.* mortgaged it to *C.* without notice of the mistake, and *D.* afterwards paid off *C.*, but the lease was re-assigned to *B.* and not to *D.* Held, that *D.*'s claim in respect of the mortgage and sums advanced by him without notice had priority over *A.*'s equity to reform the lease. *Garrard* v. *Frankel*. vol. 30, p. 445

20. The Plaintiffs sold and conveyed a plot of land to the trustees of a building society. Though the conveyance contained a receipt for the whole purchase-money, a part only was paid, and the vendors retained the conveyance as an equitable security for the remainder. The land was divided into lots and sold, and conveyed by the trustees to the allottees, who resold them to other persons without notice of the Plaintiff's lien, but who neglected to require the production of

PRIORITY OF CHARGES.

[*See* ADMINISTRATION, E… JUDGMENT, MERGER OF C… GAGE, MORTGAGE (FU… CES), NOTICE, REG… STOP ORDER.]

1. A party entitled t… terms vested in … jointure and po… retained the … sion. Held, … part of the … to postpo… quent pr… tion.

2. *A. B.* … was … *C.* … w… y…

…vol. 32, p. 213

…borrowed … deeds … stated, of … Instead of … legal mort… to *C. D.*, and … money, on a trans… the delivery … creditor with… Held, that the loss must … and that he was liable to … *Adsetts* v. *Hives.*

vol. 33, p. 52

23. A creditor obtained a judgment against the executor, and, on the same day, a decree was made for the administration of the estate. Held, that the judgment creditor had obtained no priority. *Parker* v. *Ringham.* vol. 33, p. 535

24. An officer, on his marriage, covenanted to settle the produce of his commission when he sold out. He subsequently charged the proceeds in favour of his army agents. Afterwards, and before the receipt of the proceeds by the army agents, the trustees of the settlement gave them notice of the covenants. Held, that the agents had the first charge on the proceeds. *Somerset* v. *Cox.*

vol. 33, p. 634

25. A first mortgagee purchased the equity of redemption, which was conveyed to him. Held, under the circumstances, that the second mortgagee had not thereby obtained priority over the first. *Hayden* v. *Kirkpatrick.* vol. 34, p. 645

26. *A. B.*, in whom a lease was vested, deposited it with his bankers by way of equitable mortgage. The bankers afterwards received notice (as the fact was) that *A. B.* was a mere trustee of the leasehold, but they subsequently obtained from him a formal mortgage of the legal estate. Held, that the *cestuis que trusts* had priority over the bankers. *Baillie* v. *M'Kewan.* vol. 35, p. 177

PRIVILEGE.

[*See* PRIVILEGE FROM ARREST, PRODUCTION OF DOCUMENTS (PRIVILEGE).]

…FROM ARREST.

…who is proceeding to Court … his professional business, there … is privileged from arrest. *At…ney-General* v. *The Leathersellers' Com…pany.* vol. 7, p. 157

2. A solicitor while on his way to attend a summons at Judges' Chambers is privileged from arrest. *Re Jewitt.*

vol. 33, p. 559

PRIVITY OF CONTRACT.

1. In proceedings to recover an estate, *A.* became greatly indebted to his solicitor. An agreement was entered into between *A.* and his brother *B.*, by which *A.* agreed to relinquish his interest in the estate to *B.* in consideration of *B.* undertaking to pay the costs already incurred, with interest. Held, that the solicitor, being no party to the agreement, could not enforce it. *Moss* v. *Bainbrigge*; *Bainbrigge* v. *Moss.* vol. 18, p. 478

2. A milkman, carrying on business in three places, took the Defendant into his service. The Defendant engaged, as regarded the milkman, his assignees and successors, not to carry on a similar trade within certain limits. *A.* sold his branch business at one of the three places to the Plaintiff, who retained the Defendant in his service. Held, that the Plaintiff, as assignee and successor of part of the business, was entitled to the benefit of the Defendant's contract. *Benwell* v. *Innes.* vol. 24, p. 307

3. A collector of parish rates, appointed by one set of overseers, held accountable to their successors in office for moneys received prior to the appointment of the latter. An account was directed against the collector, not disturbing accounts settled with the predecessors, with liberty to surcharge, and the Defendant, who resisted the account, was ordered to pay the costs to the hearing. *Sellar* v. *Griffin.*

vol. 32, p. 542

PROBATE.

[*See* PAYMENT OUT OF COURT, WILL.]

PROCESS.

[*See* ABSCONDING DEFENDANT, SHERIFF.]

1. The same person who has caused another to be illegally arrested and detained, cannot serve him with a *subpœna* for costs whilst in custody. *Hawkins* v. *Hall.*

vol. 1, p. 73

2. A Defendant having been committed to the *Fleet* for not answering, was discharged with costs, in consequence of having been turned over to the *Fleet*, after the expiration of the time limited

to the Plaintiff, for bringing him to the bar of the Court. *Greening* v. *Greening.* vol. 1, p. 121

3. It is irregular to serve *a writ of execution*, commanding payment of money, after the expiration of the time appointed for payment in the order upon which the writ is founded. *Duffield* v. *Elwes.* vol. 1, p. 269

4. The Plaintiff, arrested under an attachment sued out by the Defendant, which was afterwards set aside for irregularity, brought an action for false imprisonment against Defendant. The Court restrained the action and referred it to the Master to settle a proper compensation. *Bicknell* v. *Stamford.* vol. 1, p. 368

5. A Defendant was taken under an attachment for not answering, and not having been brought to the bar within the proper time, was discharged. The Court directed, that unless he answered within a fortnight a new attachment should issue against him. *Robey* v. *Whitewood.* vol. 5, p. 399

6. Attachment discharged with costs, on the ground of the order upon which it was founded having inaccurately stated the consequences of a non-performance. *Hinde* v. *Blake.* vol. 5, p. 431

7. In case of default by a party in producing deeds in the Master's office pursuant to a decree, in which case the Serjeant-at-Arms goes upon a disobedience of the four-day order. *Hobson* v. *Sherwood.* vol. 6, p. 63

8. Proceeding, where there was ground for believing, that the return of the Serjeant-at-Arms of *languidus* was untrue. *Bacon* v. *Barnett.* vol. 7, p. 46

9. A prudent solicitor never takes an order for time to answer, on the condition of a Serjeant-at-Arms, in the terms of the 21st Order of *December*, 1833. *Holmes* v. *Baddeley.* vol. 7, p. 69

10. Upon a taxation, not in a cause, a sum was found due to a solicitor from his client. Held, that to compel payment, proceedings must be had under the old practice, and not under the 11th Order of *August*, 1841. *In re Lovell.* vol. 9, p 332

11. The Master of the Rolls has no authority to inquire whether the keeper of the Queen's prison obeys the regulations established for the government of his prison, or give directions as to the mode of treating the prisoner committed to his custody for contempt. *Oldfield* v. *Cobbett.* vol. 11, p. 258

12. Attachment for want of answer ordered, *ex parte*, against a married woman, who had appeared and was at liberty to answer separate from her husband. *Taylor* v. *Taylor.* vol. 12, p. 271

13. A Defendant who had absconded "to avoid service of any legal process," Held to be within the 31st Order of *May*, 1845, and service of process by notice in the *London Gazette* was directed. *Barton* v. *Whitcombe.* vol. 16, p. 205

14. A sequestration having been only partially successful, a motion was made to revive an attachment. Held, that the order could not be made *ex parte*. *Knott* v. *Cottee.* vol. 19, p. 470

15. The sheriff having taken bail upon an attachment, in a case not bailable, the Court directed a messenger to go. *Cowdray* v. *Cross.* vol. 24, p. 445

PRO CONFESSO.

1. Where an issue is directed by the Court, and the Plaintiff makes default in going to trial, it will be taken *pro confesso* against him, unless reasonable cause for the neglect be shewn. A negotiation for a compromise held, in such a case, to be a reasonable cause. *Johnston* v. *Todd.* vol. 3, p. 218

2. Under the 1 *Will.* 4, c. 36, a decree, even when there is but one Defendant, cannot be taken *pro confesso* on motion. *Collins* v. *Collyer.* vol. 3, p. 600

3. Where a bill is taken *pro confesso*, the Plaintiff is not entitled to such decree as he can abide by, but to such decree only as he is entitled to on the record. *Stanley* v. *Bond.* vol. 6, p. 421

4. Course of proceedings to take a bill *pro confesso* after appearance. *Ibid.* vol. 7, p. 386
(See *Brown* v. *Home.* vol. 8, p. 607)

5. It is an established rule, that where an issue is directed to be tried at a certain time, and, by the default of one party, unexplained, the trial is not then had, an order will be made to take the issue *pro confesso*. But under particular circumstances, the rule will not be applied, as where material witnesses were unable to attend at the trial. *Hargrave* v. *Hargrave.* vol. 8, p. 289

6. Whether, pending a reference as to the poverty of the Defendant, time runs against the Plaintiff for taking the bill *pro confesso*. *Semble* not. *Potts* v. *Whitmore.* vol. 8, p. 317

7. A bill was taken *pro confesso*, and was served, but the Defendant could not afterwards be found. Liberty was given to the Plaintiff to issue and execute such process of contempt as he might be advised, to compel the performance of the decree. *Brown* v. *Home.* vol. 10, p. 400

8. To take a bill *pro confesso*, it must be shewn by the evidence of the officer that he has used due diligence to execute the writ of contempt. *Yearsley* v. *Budgett.* vol. 11, p. 144

9. Motion to dispense with service on a Defendant who had never appeared, of a copy of a decree taken *pro confesso*, and

of all other proceedings in the suit, refused. *Vaughan* v. *Rogers*.
vol. 11, p. 165

10. A bill was, in the presence of and adversely to the *cestuis que trust*, taken *pro confesso* against a trustee living abroad. The Court dispensed with service of the decree on him. *Benbow* v. *Davies*.
vol. 12, p. 421

11. Where the preliminary order for taking a bill *pro confesso* has been made, the Defendant cannot be heard at the hearing unless he waives all objections. *Greaves* v. *Greaves*. vol. 12, p, 422

12. The Court has a large discretion as to ordering a bill to be taken *pro confesso*; and where a Defendant had always been resident abroad the Court refused to make the order, he not having absconded, and there appearing to be no refusal to obey the order of the Court. *Zulueta* v. *Vinent*. vol. 15, p. 272

13. Service on the Defendant of an order limiting the time within which he might apply to set aside a decree *pro confesso*, held a sufficient notice, and no application being made by him, the decree was thereupon made absolute. *Trilley* v. *Keefe*. vol. 16, p. 83

14. The Plaintiff should proceed with the greatest care in *pro confesso* cases, and bring the case strictly within the General Orders. *Buttler* v. *Mathews*.
vol. 19, p. 549

15. Bill taken *pro confesso* for want of answer against an absconding Defendant, though no interrogatories had been delivered. *Ibid.*

16. Where a Defendant is abroad, it is not necessary to issue an attachment previous to taking the bill *pro confesso*. *Ibid.*

17. A Plaintiff advertised that he would move to take a bill *pro confesso* at the end of six weeks. The notice was advertised once in every one of the first four weeks, but not in the two last. Held, that this was a sufficient compliance with the exigency of the General Orders. *Millar* v. *Elwin*. vol. 25, p. 674

18. A decree for foreclosure was made against a *cestui que trust*, and the bill was taken *pro confesso* against his trustees. The decree was served on the trustee, but without the necessary notice. After the expiration of three years, the Court dispensed with service of the decree on the trustee altogether, and made it absolute against him. *Thurgood* v. *Cane*.
vol. 32, p. 156

19. Where an appearance has been entered for a Defendant who has absconded to avoid service, the bill may be taken *pro confesso* against him, without delivering to him the interrogatories which have been filed. *Anthony* v. *Cowper*.
vol. 34, p. 77

PRODUCTION OF DOCUMENTS.

[*See* DISCOVERY, PRODUCTION (PRIVILEGE), PRODUCTION (THIRD PARTIES' INTEREST).]

1. The Court will not, at the instance of a Defendant, order the Plaintiff to produce documents, admitted to be in his possession and to relate to the matters in question, for the inspection of the Defendant.
Where, however, the Plaintiff called upon the Defendant to inspect a document in his, the Plaintiff's, possession, and to explain several errors in his accounts therein alluded to, and submitted to produce the same, the Court ordered that the Defendant should have one month's time to answer, from the time of the Plaintiff's depositing the account with his clerk in court for the Defendant's inspection. *Shepherd* v. *Morris*.
vol. 1, p. 175

2. Whether a Plaintiff can deposit a document with his clerk in court, and compel the Defendant to inspect it before answering, *quære*. *Ibid.*

3. Where on a motion for the production of papers admitted to be in the Defendant's possession, the right to their production depends on documents stated in the bill, but which are neither admitted nor denied by the answer, the Plaintiff is at liberty to verify such documents by affidavit. *Addis* v. *Campbell*. vol. 1, p. 258

4. By articles of partnership, in case of the death of a partner the survivor was to pay the amount of his capital according to the last half-yearly rest, and to take the stock, &c. After the death of one, a different arrangement was entered into between his executors (one of whom was the surviving partner) and his widow, who was beneficially interested under the will, by which the surviving partner was to take the stock at a valuation, and get in the credits, and pay the joint debts, and out of the share of the deceased partner in the surplus, to pay his separate debts and the widow's legacy. The widow by this bill sought to set aside this arrangement for fraud, and to have an account of the partnership transactions, and of the profits subsequent to her husband's death. Held, that the Plaintiff was entitled to the production of the accounts of the business, as carried on after the testator's death. *Hue* v. *Richards*. vol. 2, p. 305

5. An admission of a Defendant in his answer entitled the Plaintiff to an order for production; but liberty was given to the Defendant to relieve himself, if possible, by affidavit, from the effects of this admission. *Morrice* v. *Swaby*.
vol. 2, p. 500

6. A Defendant, who in his answer refers to a deed in the words, "as by the said

indenture, when produced, will appear," must produce it for the inspection, &c. of the Plaintiff, although he does not "crave leave to refer to it." *Welford* v. *Stainthorpe.* vol. 2, p. 587

7. The Defendants were ordered to deposit certain documents with their clerk in court for the usual purposes, and to give an inspection of the remainder at their office, and produce them at the examination of witnesses and at the hearing. Held, that the production on the examination of witnesses in town and at the hearing should be at the expense of the Defendants; and for production on the examination of witnesses in the country, at the expense of the Plaintiff. *Davies* v. *Hasford.* vol. 3, p. 118

8. The Court cannot, at the instance of the Defendant, order a Plaintiff to produce for the Defendant's inspection documents stated in his bill to be in the Plaintiff's possession. *Taylor* v. *Heming.* vol. 4, p. 235

9. Where a Plaintiff by his bill states documents to be in his possession, and it is necessary for the Defendant to see them, in order to put in his answer, the Court, though it cannot compel their production, will extend the time for answering, until after the Plaintiff has produced them. The fact of the documents being in the Plaintiff's possession, must however appear upon the record. *Ibid.*

10. A Defendant had been ordered by the Vice-Chancellor in another suit to give inspection of documents. The order had been made two years, but had not been acted on. Held, that this did not prevent an order for production in the present suit. *Bourne* v. *Mole.* vol. 4, p. 417

11. A reference was made to the Master as to a partnership and several other matters, and the parties were to produce all papers, &c. relating thereto; the Defendant was called on to produce the papers relating to the partnership, and having made default, the Master certified that he had been summoned to produce *all* the papers relating to the matters in question, and had not produced any. The certificate was ordered to be taken off the file for irregularity, and a four-day order founded thereon discharged. *Stubbs* v. *Molineux.* vol. 4, p. 545

12. A Defendant by his answer admitted that he had in his possession "divers books of account." Held, that the particulars were not sufficiently specified to enable the Court to make an order for their production. *Inman* v. *Whitley.* vol. 4, p. 548

13. An objection to the production of documents must be properly raised by the Defendant's answer, where the bill seeks their production. *Hunter* v. *Capron.* vol. 5, p. 93

14. Pending exceptions to an answer for insufficiency, the Plaintiff may move for the production of documents admitted by that answer to be in Defendant's possession. *Hunter* v. *Capron.* vol. 5, p. 93

15. Memoranda, the production of which the Plaintiff was entitled to, were entered in the same book with other matters, to a discovery of which the Plaintiff was not entitled, and they could not be separated or sealed up. Held, that the Defendant must suffer the inconvenience of his own act, and produce the whole. *Carew* v. *White.* vol. 5, p. 172

16. On a motion for the production of documents, the Defendant was permitted to shew, by affidavit, that they could not be left in the office without great inconvenience; but as the ground for this indulgence was not stated by the answer, he was ordered to pay the costs. *Gardner* v. *Dangerfield.* vol. 5, p. 389

17. Where deeds are impeached for fraud, the mere allegation of fraud by the bill will not entitle the Plaintiff to an order for their production; on the other hand, in order to obtain a production, it is not necessary that the fraud should be admitted by the answer, the Court must look at the circumstances of each case. *Bassford* v. *Blakesley.* vol. 6, p. 131

18. Order made for the production of a deed impeached for fraud, though the fraud was denied by the answer, the case on the whole being such as to render an inspection proper. *Ibid.*

19. An admission of the possession by an agent on behalf of the Defendant and other persons who are not parties to the cause, of documents relating to the matters in question, does not entitle the Plaintiff to an order for their production. *Lopez* v. *Deacon.* vol. 6, p. 254

20. A Plaintiff does not, by obtaining an order to amend, between the time of giving notice of a motion for the production of documents and its being heard, deprive himself of his right to their production. *Chidwick* v. *Prebble.* vol. 6, p. 264

21. Motion in a supplemental suit, to deposit documents with the Master, in whose office other documents had been deposited in the original suit, instead of with the writ clerks, though unopposed, was refused. *Alcock* v. *Sloper.* vol. 7, p. 48

22. After a bill for redemption had been filed, but before the *subpœna* had been served, the mortgagee transferred his mortgage, and his transferee was brought before the Court by supplemental bill. It was alleged that the transfer had been made for fraudulent and vexatious purposes. Held, that the Plaintiff was not entitled to the production of the deed of transfer. *Gill* v. *Eyton.* vol. 7, p. 155

23. Order for the production of title-deeds of a mortgagee, who also claimed to be a purchaser of the equity of redemption, refused. *Greenwood* v. *Rothwell.* vol. 7, p. 291

24. A bill was filed, insisting on a partition already made between the Plaintiff and Defendant, who were tenants in common. The bill contained an alternative prayer for a partition under the Court. The Defendant insisted on the invalidity of the partition, but admitted the possession of documents shewing the manner in which she had since dealt with her share of the property. Held, that the Plaintiff had an interest in them, if it were only for the purpose of ascertaining who were tenants in common with him. *Maden* v. *Veevers.* vol. 7, p. 489

25. A Plaintiff, unless he specifically offers to do so by the bill, or is required to do so by a cross-bill, is not bound to produce, previous to the Defendant being compelled to put in his answer, documents admitted to be in his (the Plaintiff's) possession, and alleged as proving his case. *Bate* v. *Bate.* vol. 7, p. 528

26. After bill filed, a shareholder, who was a Defendant, transferred his shares, and ceased to be a member. He shortly afterwards put in his answer, stating he had not, and was not entitled to have, access to the company's papers, and could not set forth whether they had any documents in their possession, or set forth a schedule thereof, the contrary being charged by the bill. Held, that the answer was sufficient. *Ellwand* v. *M'Donnell.* vol. 8, p. 14

27. A Defendant, in his first answer, stated, that certain papers were in the possession of his solicitor, and being asked by the amended bill to set forth a schedule thereof, he stated, that his solicitors had made diligent search for them, but that they could not be found, having been misplaced or mislaid in their office; and that, therefore, he could not set forth a schedule for them. Held, that the answer was sufficient. *Ibid.*

28. The general rule is, that a Defendant is bound to discover all the facts within his knowledge, and to produce all documents in his possession, which are material to the case of the Plaintiff. However disagreeable it may be to make the disclosure,—however contrary to his personal interests,—however fatal to his claims, he is compelled to set forth, on oath, all he knows, believes, or thinks in relation to the matters in question. *Flight* v. *Robinson.* vol. 8, p. 22

29. In a bill to redeem, the Plaintiff contested the validity of one of several mortgages held by the Defendant. Held, that he was not entitled to a production. *Crisp* v. *Platel.* vol. 8, p. 62

30. Re-delivery of documents deposited in the Master's office ordered, on petition, in an abated suit. *Alderman* v. *Bannister.* vol. 9, p. 516

31. It is not the practice to order the production of documents admitted in the answer, for a limited period. *Attorney-General* v. *Bingham.* vol. 9, p. 159

32. A mortgagee, against whom a bill was filed by another mortgagee for redemption and foreclosure, admitted the possession of vouchers consisting of bills of exchange and promissory notes. Held, that he was bound to produce them. *Gibson* v. *Hewett.* vol. 9, p. 293

33. In an abated suit, the Master had no jurisdiction, to direct the re-delivery of papers deposited in his office. *Ibid.*

34. The old practice must be followed to compel a solicitor to deliver over documents to his client, where the application is "in the matter;" and the 12th Order of *August*, 1841, is inapplicable to such a case. *In re Taylor.* vol. 10, p. 221

35. Motion to produce documents refused, on the ground that the Plaintiff's title was not sufficiently admitted by the answer. *M'Hardy* v. *Hitchcock.* vol. 11, p. 73

36. On such a motion, the Court does not require the Plaintiff to produce any absolute admission of title, but merely such a probability of title as it can safely act on. *Ibid.*

37. Production refused of a deed, which the Plaintiff, by his bill, sought to set aside. *Dendy* v. *Cross.* vol. 11, p. 91

38. A defendant put in a plea to a part of the bill and answered the remainder. The Plaintiff moved for production before the plea had been set down, but the Court directed the motion to stand over, until the plea had been argued. *Buchanan* v. *Hodgson.* vol. 11, p. 368

39. Order for production made, on admissions in an answer filed prior to the amendment of the bill, but which did not vary the case. *Reynell* v. *Sprye.* vol. 11, p. 618

40. Obligation of a party, holding a fiduciary office over property under another, to make a discovery of the particulars of an adverse title set up by him. *The Attorney-General* v. *The Corporation of London.* vol. 12, p. 8

41. The corporation of *London* who held the office of conservators of the river *Thames* under the Crown, claimed the freehold of the bed and shores, and in answer to an information, which insisted on the right of the Crown thereto, set up a prescriptive title, and refused to discover the charters, &c. under which they held, the particulars of their title, the mode in which they intended to make it out, or the evidence by which it was to be supported. They admitted the possession

of documents relating (as they said) to their own right, and which formed material evidence for them, but did not (as they said) tend to prove the right of the Crown, and they submitted they were not bound to set forth a list thereof. The Court, on a consideration of the whole case, having regard to the nature of the title claimed to the bed or soil of the river, to the circumstances under which it was claimed, and to the fiduciary relation which subsisted between the Crown and the corporation in respect of the conservancy, Held, that the Defendants were bound to give the discovery required. *The Attorney-General* v. *The Corporation of London.* vol. 12, p. 8

42. On motion for production, the Defendant asked that the Plaintiff might be prevented using them for any collateral purposes, alleging that there were proceedings at law pending. The Court, however, declined so to restrict the order. *Tagg* v. *The South Devon Rail. Co.* vol. 12, p. 151

43. A suit was instituted by a *cestui que trust*, to set aside a sale by trustees to their solicitor. The solicitor submitted to give up the purchase on repayment. He admitted the possession of the title-deeds, but resisted their production, unless the Plaintiff consented to repay the purchase-money, saying that the title was bad, and that the Plaintiff would have the power, as he had the inclination, to expose the title, in case he abandoned the suit. Held that the solicitor was bound to produce the deeds. *Shallcross* v. *Weaver.* vol. 12, p. 272

44. An order for production cannot be made against an executor upon admissions in his testator's answer. *Scott* v. *Wheeler.* vol. 12, p. 366

45. A Defendant admitted that certain documents were in the possession of himself and *W. C.* his co-executor, and that others were in the possession of their joint solicitor. *W. C.* not being a party to the suit. Held, that an order for production could not be made against the Defendant on such an admission. *Morrell* v. *Wootten.* vol. 13, p. 105

46. No affidavit is necessary to support an application for production on oath of documents under the 15 & 16 *Vict.* c. 86, s. 20. *Rochdale Canal Company* v. *King.* vol. 15, p. 11

47. The Court has settled an order under that act, requiring the Plaintiff to make an affidavit of the documents in his possession, and to produce such as he does not thereby object to produce. *Ibid.*

48. A Defendant is entitled of right to such an order for production, and a delay in making the application does not deprive him of it. *Ibid.*

49. Two Defendants admitted the possession of documents. One died. Held, that a motion for production against the survivor, in the absence of the representatives of the deceased Defendant, could not be maintained. *Robertson* v. *Shewell.* vol. 15, p. 277

50. An order gave liberty to the "Plaintiff, his solicitors or agents," to inspect documents in the Defendant's possession. Held, that this did not authorize the inspection by a non-professional relative of the Plaintiff, though alleged to be the only person conversant with the accounts. The Court also refused to make a special order permitting the inspection by such party. *Summerfield* v. *Pritchard.* vol. 17, p. 9

51. The usual order was made for the deposit by the Defendant of all documents in his possession. Some of them consisted of the court rolls of a manor, of which the Defendant acted as steward, but his right to that office was contested. The Court released the Defendant from the necessity of depositing them in court, and ordered the production at the steward's. *Carew* v. *Davis.* vol. 21, p. 213

52. Questions of insufficiency of answer and production of documents rest on the same grounds, and must be dealt with in the same way. *Clegg* v. *Edmonson.* vol. 22, p. 125

53. An undertaking to produce documents to the Plaintiff, means to him, his solicitor and agents. *Williams* v. *The Prince of Wales Life, &c. Company.* vol. 23, p. 338

54. A solicitor and his client were both Defendants. The solicitor admitted documents in his possession belonging to his client, but claimed privilege; the client made no admission as to possession of these documents. Upon an application in the presence of both, the Court made an order for production. *Gaskell* v. *Chambers.* (No. 2.) vol. 26, p. 303

55. In Chambers, after decree, a Defendant may be ordered to produce documents on the application of a Co-Defendant. *Hart* v. *Montefiore.* vol. 30, p. 280

56. The Plaintiff entered into the service of the Defendant at a weekly salary, and it was verbally agreed that he should also have a share of the profits; but he was to take the Defendant's word as to the amount of profits made, and was, in no case, to examine or investigate the books of the business. In a suit to recover the Plaintiff's share of the profits, the parties contradicted each other as to the proportion to which the Plaintiff was entitled. Held, at the hearing, that the Defendant must produce the books in order to determine the point in dispute. The Court also directed an inquiry as to the proportion, and an account

of the profits to be taken. *Turner* v. *Bayley.* vol. 34, p. 105

PRODUCTION (THIRD PARTIES' INTEREST).

1. The Defendant, being entitled to an estate, subject to a charge thereon belonging to the Plaintiff, mortgaged it, and delivered the title-deeds to the mortgagees, but he retained copies. Held, that he was bound to produce the copies, though the mortgagees were not parties to the suit. *Hersy* v. *Ferrers.* vol. 4, p. 97
2. A bill of discovery was filed by the assignee of the lessor against the assignee of the lessee in aid of an action at law on the covenants in the lease. The latter had the lease and assignment in his possession, but stated that he held the property by way of security, and he objected to produce them in the absence of the party entitled to the equity of redemption. Held, that he was bound to produce them for the Plaintiff's inspection. *Balls* v. *Margrave.* vol. 4, p. 119
3. One member of a club, on behalf of himself and the rest, sued two other members, to recover back moneys belonging to the club. It having been determined that the other individual members were not necessary parties: Held, that the Defendants could not resist the production of documents in their possession, on the ground that the other members had an interest in them. *Richardson* v. *Hastings.* vol. 7, p. 354
4. A Plaintiff ought not to use for any collateral purpose documents ordered by the Court to be produced for the purposes of the suit. *Ibid.*
5. A Defendant admitted that documents were in his solicitor's hands, having come to them as the representatives of the solicitors of the Defendant's testator; but he said they were not "in his possession or power or under his control." The Court refused to order a production. *Palmer* v. *Wright.* vol. 10, p. 234
6. A Defendant before answer became bankrupt. He put in his answer, stating that certain books and letters were in the possession of his solicitor, who claimed a lien on them, and that he could not obtain possession thereof. The Court ordered the Defendant to produce them, with liberty to apply in case of need. *Rodick* v. *Gandell.* vol. 10, p. 270
7. *A. B.* settled property on trust for the Plaintiff and others, but he reserved a power of defeating it. The Plaintiff alleged, that the trusts had been partially defeated by a subsequent deed, and called upon the trustee to produce, the trust deed. The trustee in his answer stated, that the Plaintiff's interest had been totally defeated by the subsequent deed, which he did not object to produce, but he said that *A. B.*, who was not a party to the suit, objected to the production. Held, that the Plaintiff was entitled to inspect it, but that the order could not be made in the absence of *A. B.* *Bugden* v. *Tylee.* vol. 21, p. 545
8. A Plaintiff obtaining information from the production of documents in the Defendant's possession, is not at liberty to make it public, and an injunction will, if necessary, be granted to restrain him. A Plaintiff having published statements relative to the matters in question was, as a condition for making an order for production of documents, required to undertake "not to make public or communicate to any stranger the contents of such documents." *Williams* v. *Prince of Wales Life, &c. Co.* vol. 23, p. 338
9. Distinction between the production of documents at the instance of the party who created the lien, and of a stranger, and between production and parting with the possession. *In re The Cameron's Coalbrook, &c. Rail. Co.* vol. 25, p. 1
10. A witness is bound to produce a document, in order that it may be given in evidence, notwithstanding he may have a lien on it. *Ibid.*
11. Title-deeds were in the custody of the solicitor of two tenants in common, *A.* and *B.* Held, that *A.* could not be ordered to produce the deeds in a suit to which *B.* was not a party. *Edmonds* v. *Lord Foley.* vol. 30, p. 282

PRODUCTION (PRIVILEGE).

1. The privilege of a client, as to discovery, is not co-extensive with that of his solicitor; there are cases where the solicitor would be protected from discovery, but the client would not. *Greenlaw* v. *King.* vol. 1, p. 137
2. A case submitted to counsel, and confidential communications had with his solicitor by a deceased owner of a charge on a living, in contemplation of proceedings being taken by the future incumbent, and which had come into the possession of the Defendant, who was the assignee of the charge. Held, not privileged. *Ibid.*
3. Confidential communications, which took place after the dispute had risen, between a Defendant and a solicitor who acted as agent and adviser only, but not as solicitor. Held, not privileged. *Ibid.*
4. Necessary communications between a solicitor and client, through an unprofessional person, are privileged; but it not appearing in this case that the communications were wholly of a professional or confidential nature, such privilege was disallowed. *Bunbury* v. *Bunbury.* vol. 2, p. 173
5. A case submitted since the institution

of the suit, for the opinion of Dutch counsel and the opinion thereon, Held privileged. *Bunbury* v. *Bunbury*. vol. 2, p. 173

6. An information made claim, on behalf of a charity, to a farm, out of which a fixed annual rent-charge had for many years been paid. The Defendant admitted the right to the rent-charge, but contended that he represented parties who were purchasers of the farm for valuable consideration, without notice. He admitted he had in his possession tittle-deeds which made out his own title, but did not make out or evidence the title of the charity. Held, that the Defendant was not bound to produce them. *Attorney-General* v. *Strutt*. vol. 3, p. 396
7. The Plaintiff was entitled to a legacy which the testator had charged on his estates, not in settlement. The Defendant stated that the testator was tenant in tail of part of the estate, but did not specify it; and he admitted the possession of a copy of a deed creating the entail, but he stated it did not make out the Plaintiff's case. Held, he was bound to produce it for the Plaintiff's inspection, as tending to shew what estates were in settlement. *Hercy* v. *Ferrers*. vol. 4, p. 97
8. A correspondence took place between a client and his solicitor during the progress of a suit. A compromise was effected, but afterwards a second suit was instituted to set it aside, and to prosecute the original suit. Held, that the correspondence was privileged in the second suit. *Hughes* v. *Garnons*. vol. 6, p. 352
9. *A.* and *B.* claimed an estate adversely, as heirs *ex parte paterna*, and *C.* claimed the estate as heir *ex parte materna*. In a suit by *A.* against *B.* to set aside a compromise entered into between them, *B.* admitted he had in his possession cases submitted for the opinion of counsel after *C.*'s adverse claim, and in contemplation of legal proceedings. Held, that they were not privileged. *Holmes* v. *Baddeley*. vol. 6, p. 521
10. A Defendant admitted the possession of documents, but stated that they were all prepared and made since the dispute arose, in contemplation of the litigation of that dispute, and her defence against the Plaintiff's claim, but she did not connect them with her professional advisers. Held, that they were not privileged, and ought to be produced. *Maden* v. *Veevers*. vol. 7, p. 489
11. Letters written by a Defendant, after the institution of the suit, to an unprofessional agent abroad, "confidentially and in reference to the defence of the Defendant to this suit:" Held, not privileged. *Kerr* v. *Gillespie*. vol. 7, p. 572
12. Confidential communications between attorney or counsel and client, anterior to the suit, and without reference thereto, are not privileged. *Flight* v. *Robinson*. vol. 8, p. 22
13. In a suit for specific performance, cases submitted to counsel subsequent to the contract, relating to the sale, the objections taken by the purchaser to the vendor's title, the steps taken by the vendors to clear up the objections, &c.: Held to be communications made with reference to the dispute which resulted in the litigation, and privileged. *Ibid.*
14. Communications between the assignees and the Commissioner of the Insolvent Debtors' Court held not privileged. *Ibid.*
15. Books, &c. relating to the matters in question in the possession, but not the property of, the Defendant's solicitors, not ordered to be produced. *Ibid.*
16. Cases and the opinions of counsel thereon, anterior to the litigation, held, privileged from production. *Reece* v. *Trye*. vol. 9, p. 316
17. On a bill to enforce an arrangement respecting land entered into by the Defendant's father in his life, the Defendant stated, that "under a deed" of 1789, which was in the Defendant's possession, his father was tenant for life, and that from 1789, his father had no greater estate than for his life. He also stated, that he himself was tenant in tail "under" the same deed. Held, that the plaintiff was not entitled to a production. *Wasney* v. *Tempest*. vol. 9, p. 407
18. Upon a motion for production of documents, the defendant was permitted to produce an affidavit to shew they were privileged. Held, that the Plaintiff was not entitled to use an affidavit in opposition to it. *Blenkinsopp* v. *Blenkinsopp*. vol. 10, p. 143
19. A bill was filed against *A.* and *B.* (a solicitor) to set aside a conveyance from *A.* to *B.*, made pending a suit in the Ecclesiastical Court in order to defeat the Plaintiff's right. *B.*, by his answer, admitted the possession of certain documents, and stated the suit had been wholly conducted by a proctor, and that he, *B.*, had acted as solicitor for *A.* in that suit, so far as *A.* had employed a solicitor therein but he made no case for exemption from production. On a motion for production, *B.* was allowed to file an affidavit in aid, and he thereby stated, in addition, that he had been and was still *A.*'s solicitor, so far as he had a solicitor, and was consulted by him as regarded the proceedings in the Ecclesiastical Court; that the letters in his possession were written by *A.* to him, as such his solicitor, and that the same were private and privileged communications made by *A.* to

B.; that cases for the opinion of counsel were prepared by him, as such solicitor of *A.*, and the opinions taken, for the purpose of advising *A.* and *B.* with regard to the proceedings in the Ecclesiastical Court, and that the documents relating to the Ecclesiastical Court came into his possession as solicitor for *A.* Held, that upon the answer alone, the documents were not privileged, but that on the answer and affidavit, the Plaintiff was not entitled to their production. *Blenkinsopp* v. *Blenkinsopp.* vol. 10, p. 277

20. Disputes arose between two *cestuis que trust* in respect of the trust matters, and the trustee acted as solicitor for one. Held, that the communications between such solicitor and *cestui que trust* were not privileged as against the other. *Tugwell* v. *Hooper.* vol. 10, p. 348

21. The title of *R.* to an estate having been discovered by *B.*, *R.* agreed to give *B.* a moiety of the estates for his exertions, &c., and *B.* was to prosecute the claim at his own risk. *B.*, through his solicitor, afterwards took the opinion of counsel upon the case, and instituted a suit of *R.* v. *R.* in the name of *R.*, under a power of attorney given by *R.* for that purpose. Held, in a suit by *R.* to set aside the transaction, that *B.* was bound to produce the case and opinion, and the documents in *R.* v. *R.*, for *R.*'s inspection, the same not being privileged. *Reynell* v. *Sprye.* vol. 10, p. 51

22. In the same case, *B.*, wishing to purchase the remaining moiety, procured his solicitor to write him a letter to shew to *R.*, and calculated to induce him to sell. *R.* agreed to sell. Held, in a suit to set aside the sale, that the letter was not a privileged communication. *Ibid.*

23. Production refused of letters which passed between the respective solicitors, with a view to a compromise, upon an express stipulation that they should not in any way be referred to or used to the prejudice of the Defendant, if an amicable arrangement was not come to. *Whiffen* v. *Hartwright.* vol. 11, p. 111

24. *A. B.* wrote the draft of a letter to his solicitor, in order that such solicitor might write a similar one to him to be shewn to *C. D.*, and thereby induce him to enter into a contrast. On a bill to set aside the contract for fraud, Held, that the solicitor was bound to produce the letter, but not the other correspondence between himself and his client. *Reynell* v. *Sprye.* vol. 11, p. 618

25. Case and opinion submitted and taken by trustees in contemplation of the litigation, held privileged as against the *cestui que trust.* *Brown* v. *Oakshott.* vol. 12, p. 252

26. Where a defendant has in his possession documents belonging to his client or *cestui qui trust*, a production will not be ordered in their absence (per Sir *L. Shadwell*). But where an action at law is brought by a trustee by the direction and for the benefit of the *cestui que trust*, such trustee is bound to produce all the documents to the same extent as if he had not only the legal but also the beneficial interest. (Per Lord *Lyndhurst.*) *Few* v. *Guppy.* vol. 13, p. 457

27. The Plaintiff, the owner of an estate, appointed the Defendants receivers and surveyors. The Plaintiff discharged the Defendants, and filed a bill for the delivery up of all documents relating to the estate. The Defendants admitted the possession of certain documents connected with the property, which they insisted were their own *private memoranda.* Held, that they were bound to produce them, in order to enable the Court to judge whether they were of such a nature that they ought to be delivered up. *Lady Beresford* v. *Driver.* vol. 14, p. 387

28. A Defendant held not bound to set forth a list of documents in his possession relating to his own title. *Sutherland* v. *Sutherland.* vol. 17, p. 209

29. Cases and opinions of counsel taken by trustees, as such merely, are not entitled to protection in a suit by the *cestuis que trust* against the trustees or their representatives. *Devaynes* v. *Robinson.* vol. 20, p. 42

30. The same rule applies to cases and opinions taken before the time when the Defendant (the representative of a trustee) admits having first heard of the questions raised by the bill. *Ibid.*

31. A witness or a solicitor is bound to produce a document, in order that it may be given in evidence, notwithstanding he may have a lien on it. *In re The Cameron's Coalbrook, &c. Railway Company.* vol. 25, p. 1

32. *A*, the owner of an estate, first mortgaged it to *B.*, and afterwards sold and conveyed it to *C.*, to whom he delivered the title-deeds. In a suit by *B.* against *C.*, insisting on his priority, *C.*, by his answer, professed to state the contents of the deed of conveyance to *A.* He admitted the possession of this and the other title-deeds, but insisted that he was a purchaser for valuable consideration without notice; and he said that *B.* had no right or title to the production of the deeds, or any interest therein. Held, that *B.* was entitled to the production of the conveyance to *A.*, but that the other title-deeds were privileged. *Hunt* v. *Elmes.* vol. 27, p. 62

33. A trustee taking counsel's opinion to guide himself in the administration of his trust, and not for the purpose of his defence in a litigation against himself, is bound to produce them to his *cestui que*

trust; but the relation of trustee and *cestui que trust* must, for that purpose, be first established. *Wynne* v. *Humberston*. vol. 27, p. 421

34. A mere claimant to an estate is not entitled to the production of cases and opinions taken by a trustee. *Ibid.*

35. Documents accompanying a case for the opinion of counsel are privileged. *Ibid.*

36. Whether one Defendant can call on a Co-Defendant to produce documents in his possession, *quære*. *Ibid.*

37. A Defendant was committed for the non-production of documents admitted by him to be in his possession or power. It afterwards appearing that prior to the suit they had been deposited with a third party, who claimed a lien thereon, which the Defendant was unable to satisfy, he was discharged from custody without producing them. *North* v. *Huber*. vol. 29, p. 437

38. Indexes prepared by the deputy steward of a manor, but claimed to be his private property, ordered to be produced for inspection, in a suit by the lord for delivery up of all documents relating to the manor. *The Bishop of Winchester* v. *Bowker*. vol. 29, p. 479

39. Where the solicitor of a company writes a letter apparently on behalf of the company, he has no such property in it as to entitle him to prevent its publication, although he swears that it was written in his private capacity. *Howard* v. *Gunn*. vol. 32, p. 462

40. The Defendant, the trustee and executor, was also mortgagee of part of the estate. Upon a bill for the administration of the estate, Held that the Defendant was not bound to produce the mortgage and title-deeds, but that he must produce all accounts in his possession relating to the mortgage. *Freeman* v. *Butler*. vol. 33, p. 289

PROHIBITION.

1. Writ of prohibition against a county court judge, granted in the vacation by the Master of the Rolls. Jurisdiction was afterwards given to any common law judge to grant such a prohibition in the vacation. See 13 & 14 *Vict.* c. 61, s. 22. *Wright* v. *Cattell*. vol. 13, p. 81

2. This Court discourages applications in term for a prohibition, even though the proceeding has originated here in vacation. *Re Michael Foster*. vol. 24, p. 428

3. The Master of the Rolls declined to direct a writ of prohibition to issue to the Court of Chancery of the county palatine of Lancaster, in respect of an order for taxation, his Honor being of opinion that the proper course was to appeal to the appellate Court constituted by the 17 & 18 *Vict.* c. 82. *Ex parte Williams*. vol. 34, p. 370

PROMISSORY NOTE.

A promissory note, dated the 4th of *October*, 1842, was payable "at six months' notice." An action was brought on it in *October*, 1848, and the indorsement on the writ stated, that on payment within four days, proceedings would be stayed. The action was abandoned, and a formal notice to pay in six months was given in *January*, 1850. The testator died in *December*, 1850, having devised his real and personal estate to his executors, in trust to sell, and in the first place pay his debts. A creditor's suit was instituted by the payee in 1855, to which the administrators pleaded the Statute of Limitations. The Court held, that the trust for payment of the debts prevented the operation of the statute both as to the real and personal estate, and that neither the action nor the indorsement on the writ were sufficient notice to pay, according to the tenour of the note. *Moore* v. *Petchell*. vol. 22, p. 172

PROMOTERS' CONTRACTS.

1. A railway company held not bound by a contract entered into by the projectors prior to their incorporation. *Preston* v. *The Liverpool, Manchester and Newcastle-upon-Tyne Junction Railway Company*. vol. 17, p. 114

2. The projectors of a railway company entered into a contract with a landowner for the purchase of the land required. Subsequently the act passed establishing and incorporating the company. The company abandoned the undertaking, without having done anything to adopt the contract, except by staking out the intended line. Held, that the company were not bound, the contract not being under the corporate seal, and there being no sufficient adoption of it. *Ibid.*

PROOF OF DEBTS.

[*See* INQUIRIES, PAYMENT (DEBTS AND LEGACIES).]

PROPERTY TAX.

[*See* INCOME TAX.]

PROSPECTUS.

[*See* COMPANY, SHAREHOLDER.]

PROTECTION ORDER.

[*See* MARRIED WOMAN.]

PUBLIC POLICY OR CONVENIENCE.

[*See* ILLEGALITY AND IMMORALITY OF CONTRACT, RAILWAY, RESTRAINT OF TRADE.]

1. Whether a public company can contract itself out of powers given it by the legislature for the public protection, *quære. Semble*, not. *Breynton* v. *The London and North-Western Railway Company.* vol. 10, p. 238
2. A railway company is not like a partnership for general trading purposes, in which one portion of the business may be abandoned; but it is a partnership for a public purpose, for effecting a work which it is a duty to complete. The obligation to complete the work is coextensive with the authority to make it. *Cohen* v. *Wilkinson.* vol. 12, p. 125
3. It appeared that a railway company had neither the intention nor the means, nor any probability of obtaining the means, of completing the whole of the line authorized by their act, but they appeared to have the means and intention to complete a part only. An injunction was granted, at the instance of a shareholder, in the form of restraining the company from applying the funds in the construction of the part only, or otherwise than with the view and purpose of completing the whole. *Ibid.*

   (See *Graham* v. *Birkenhead, &c. Railway Company.* vol. 12, p. 460
   Hodgson v. *Earl Powis.* vol. 12, p. 529
   Logan v. *Earl of Courtown.* vol. 13, p. 22)
4. A plaintiff sued, as one of the public, to restrain a railway company from closing it. Held, that such a suit could not be maintained. *Thorne* v. *The Taw Vale Railway and Dock Company.* vol. 13, p. 10
5. Bequest for purchasing the discharge of poachers, "committed to prison for non-payment of fines, fees or expenses under the game laws." Held void, as encouraging offences, and opposed to public policy. *Thrupp* v. *Collett.* (No. 1.) vol. 26, p. 125
6. The Defendants proposed turning an inclined road or slipway, leading from the town to the sea-shore, from the north-east to the north-west. It appeared that this, so far from producing any injury, would make a more convenient landing place. Held, that whether the Defendants were authorized or not, the Court would not interfere in the matter. *The Ryde Commissioners* v. *The Isle of Wight Ferry Company.* vol. 30, p. 616
7. A conveyance of property by a father to his son to give him a qualification to vote: Held, not invalid, but a bounty. *May* v. *May.* vol. 33, p. 81
8. The Court will take the interests of the public into consideration when asked to interfere with a railway. *Lyde, on behalf, &c.*, v. *The Eastern Bengal Railway Company.* vol. 36, p. 10

PURCHASE.

[*See* ASSIGNMENT PENDENTE LITE, PURCHASE BY FATHER IN CHILD'S NAME, PURCHASE BY LOTS, PURCHASER FOR VALUE, TRUSTEE PURCHASING, VENDOR AND PURCHASER.]

PURCHASE BY FATHER IN NAME OF CHILD.

[*See* LOCO PARENTIS.]

1. Moneys were invested in the funds, by a father, in the name of his son, the dividends of which were received by the father during his life, under a power of attorney from the son. Held, after his death, that this was an advancement, and that the funds belonged to the son. *Sidmouth* v. *Sidmouth.* vol. 2, p. 447
2. When a father purchases property with his own money, and takes a conveyance in the name of his son, the law presumes it to be an advancement for the son, and not a trust for the father. Those who allege that it is a trust are bound to prove it, and the evidence for that purpose consists mainly, if not exclusively, of contemporaneous circumstances. *Christy* v. *Courtenay.* vol. 13, p. 96
3. A sum of Consols, invested by a father in the names of his two daughters, held, under the circumstances, to form part of his estate, and not to be an advancement to them. *Bone* v. *Pollard.* vol. 24, p. 283
4. A father purchased a copyhold, and was admitted thereto to hold during the lives of his three children, *A.*, *B.* and *C.* successively. *B.*, after the death of the father and *A.*, got admitted, whereupon the Plaintiff, who claimed under the father's will, instituted a suit to have *B.* declared a trustee for him. As an excuse for not proceeding at law, the Plaintiff alleged a custom of the manor, by which the *cestui que vie* was entitled to be admitted: this was disputed. Held, that even assuming the custom, still, by the form of the grant the father had made an advancement to his sons, who were therefore entitled beneficially, and not as trustees for their father. *Jeans* v. *Cooke.* vol. 24, p. 513
5. The evidence to rebut the presumption of an advancement, in the case of a purchase by a father in the name of a child, ought to be distinct and contemporaneous. *Ibid.*
6. Purchases and mortgages were taken by a father in the name of his son. The

father received the rents and interest, and paid them into a bank, but he allowed his son to draw for the sums he required. The son died first. Held, that the presumption of an advancement was not rebutted. *Williams* v. *Williams*, vol. 32, p. 370

7. Money which was standing in the funds in the name of a married woman, was claimed after her decease and that of her husband, by her mother, as having been invested by her while separated from her husband in her daughter's name. The only evidence of the trust was the affidavit of the mother, and proof that the dividends had been received by her with the assent of the daughter and her husband. The Court held the claim of the mother established. *Down* v. *Ellis*. vol. 35, p. 578

PURCHASE BY LOTS.

1. Two houses, held under one lease, were sold separately to *A.* and *B.* The lease was produced and inspected at the sale by the purchasers' solicitors. The conditions of sale provided for the apportionment of the rent between the two purchasers, but did not notice covenants to insure, &c., and a proviso for re-entry on non-performance, contained in the lease. Held, that though *A.* might be evicted by the default of *B.*, still he was under the circumstances, bound to complete. *Paterson* v. *Long*. vol. 6, p. 590

2. Lands were subject to a lease of a wayleave at a certain rent for sixty-three years, which the lessee had the power of determining. The land and rent were sold separately by auction in two lots, and were purchased by two different persons. After some time, the purchaser of the land entered into an arrangement with the lessee to put an end to the lease, and entered into a different one, in order to defeat the right of the purchaser of the rent. Held, that this was contrary to equity, and the right of the purchaser of the rent was made good out of the new contract. *Wood* v. *the Marquis of Londonderry*. vol. 10, p. 465

3. Building land was sold in a number of lots, subject to certain conditions as to fencing, repairing the roads, and to restrictions as to the class of houses to be built. The conditions also provided, that statements to this effect should be inserted in the conveyances. By the 15th condition, the vendor reserved the right of selling the unsold lots under different arrangements, "and either subject to or not subject to the stipulations as to fencing and other stipulations contained in the particulars or the conditions." Held, first, that as to the unsold lots the vendor was subject to none of the restrictions; secondly, that the purchasers were bound to have not only the restrictive conditions stated on their conveyances, but also the 15th, in favour of the vendor; and thirdly, that a separate deed of covenant by a purchaser as to the restrictions was a sufficient compliance with the provision as to the statement on the conveyances. *Sidney* v. *Clarkson*. vol. 35, p. 118

PURCHASER FOR VALUE.

[*See* NOTICE.]

1. The defence of being a purchaser for valuable consideration without notice is available in equity against a legal as well as against an equitable title, and also as against a charity. *Attorney-General* v. *Wilkins*. vol. 17, p. 285

2. To a bill by an *eigné* against a *puisné* mortgagee, a defence by the latter, that he is a purchaser for valuable consideration, without notice of the first mortgage, is unavailing. *Finch* v. *Shaw*; *Colyer* v. *Finch*. vol. 19, p. 500

3. Where *A.* (a stranger to the trust), assuming to exercise a trust for sale, conveys the estate to a purchaser, if this Court afterwards compels the purchaser to restore the land to the *cestui que trust*, the purchaser will be entitled to all the assistance which this Court or the *cestui que trust* could give him, to recover from the self-constituted trustee the purchase-money still in his hands, or for which he might remain liable. *Hope* v. *Liddell* (No. 1); *Liddell* v. *Norton*. vol. 21, p. 183

4. The Plaintiffs sought to set aside a conveyance made by their ancestor, as they alleged, while a lunatic, under undue influence, and for an inadequate consideration. The Defendant, who claimed under a derivative title from the purchaser, insisted that he was a purchaser for valuable consideration without notice. No notice, actual or constructive, having been proved, the Court refused to interfere, and dismissed the bill with costs. *Greenslade* v. *Dare*. vol. 26, p. 284

5. Where a person takes a lease without inquiry of the title of the lessor, he cannot plead purchaser for valuable consideration without notice; and it was held, that the purchaser of a lease, subject to a stipulation that the vendor's title should commence with the lease, could not avail himself of that plea. *Robson* v. *Flight*. vol. 34, p. 110

QUESTIONS OF LAW AND FACT.

[*See* ISSUE AT LAW.]

1. The Crown might, before the abolition of the Equity Exchequer, have pro-

ceeded on the Equity side in respect of a legal right, and may now proceed in the same way in Chancery. *The Attorney-General* v. *The Corporation of London.* vol. 8, p. 270

2. Principles and practice in a case where the Plaintiff's relief in equity is dependent upon his previously establishing his legal right. *Smith* v. *The Earl of Effingham.* vol. 10, p. 589

3. The Master of the Rolls declined to bind the inheritance by the opinion of one court of law on an ambiguous will without first obtaining the opinion of another court of law. *Wilson* v. *Eden.* vol. 11, p. 289

4. Except in cases of difficulty, this Court will itself determine questions of construction in the first instance, without seeking the assistance of courts of law. *Wilson* v. *Eden.* vol. 14, p. 317

RAILWAY.

[*See* COMPANY, LANDS CLAUSES ACT, PUBLIC POLICY, ULTRA VIRES.]

1. A railway act provided, that it should not be lawful for the railway company to make or establish any *public* station, yards, wharfs, waiting, loading or unloading places, warehouses or other buildings and conveniences for the depositing, receiving, loading or keeping any passengers or cattle, or any goods, articles, matters, or things upon the estate of *R. G.* without his consent. Held on demurrer that the word "public" did not necessarily override the whole sentence, and that if it did, then that, from the subsequent clauses, every convenience connected with the railway must be considered as for the public use. *Gordon* v. *The Cheltenham Railway Company.* vol. 5, p. 229

2. It is on the ground of a general public good, that the legislature grants to railway companies the compulsory powers of taking the property of individuals. *Gray* v. *The Liverpool and Bury Railway Company.* vol. 9, p. 391

3. In questions between companies and individuals whose property the former seek to take under compulsory clauses in their acts, the Court does not strain the construction of the act in favour of the former. *Ibid.*

4. When the power of fully completing a railway, according to the intention of the legislature, depends on the voluntary consent of individuals having property on the proposed line, such consent ought to be obtained by the company before they proceed in the undertaking. *Ibid.*

5. Whether, where it is evident that the line of a railway cannot be fully completed, the company have a right, compulsorily, to take any part of the property in the proposed line, *quære.* *Gray* v. *The Liverpool and Bury Railway Company.* vol. 9, p. 391

6. Observations as to the extent of the powers given by railway acts. *Colman* v. *The Eastern Counties Railway Company.* vol. 10, p. 1

7. The directors of a railway company, for the purpose of increasing the traffic, proposed to guarantee certain profits, and secure the capital of an intended steam-packet company, who were to act in connection with the railway. Held, that such a transaction was not within their powers, and they were restrained by injunction. *Ibid.*

8. By the "Railway Clauses Consolidation Act," if a railway crosses any turnpike road, then, except where otherwise provided for by the special act, the road is to be carried over the railway, or the railway over the road. By their special act, a company were authorized to make the railway "in the line and upon the lands delineated" in the plans deposited; and they were authorized to pass a certain turnpike road on a level, and the deposited plans so represented. The Plaintiff agreed to sell to the company a portion of his land, adjoining the road, and the agreement recited, that it was purchased for the purpose of constructing the railway "according to a certain plan and section thereof deposited," &c. Held, that the company, under the acts, had power to make the turnpike road pass *under* the railway instead of on a level, and that this right had not been destroyed by the agreement with the Plaintiff. *Breynton* v. *The London and North-Western Railway Company.* vol. 10, p. 238

9. A railway company authorized to make a line of fifty-six miles, resolved on making only four miles of it, and to abandon the rest. Held, that such a resolution was illegal, both as against the landowners on the line and the shareholders in the Company. *Cohen* v. *Wilkinson.* vol. 12, p. 125

10. The powers contained in railway acts are given only in the contemplation of the supposed public good by completion of the whole work; and this Court will interfere when it sees that the whole undertaking cannot be completed. *Ibid.*

11. Where a railway company has undertaken to complete a line, or any series of lines, they are bound to complete the whole line or series of lines, and are not, without parliamentary authority, at liberty to abandon any portion of their undertaking. *Graham* v. *The Birkenhead, Lancashire, and Cheshire Junction Railway Company.* vol. 12, p. 460

12. Existing contracts for making part of the line are no answer to an application to prevent a railway company from making a portion of the line with an intention of completing less than the whole. *Graham* v. *The Birkenhead, Lancashire, and Cheshire Junction Railway Company.* vol. 12, p. 460

13. On an application for an injunction to prevent a railway company from making a portion only of their line, abandoning the rest, the Court would not be disposed to act in a severe and strict manner, if, by a small expenditure, a great benefit might result to the shareholders and a considerable advantage to the public. *Ibid.*

14. Where a railway company has formed a portion of the line, but is unable to complete the whole, the Court exercises a discretion in granting an injunction, the effect of which will be to prevent that portion being made effective and beneficial to the public and profitable to the shareholders. *Hodgson* v. *Earl Powis.* vol. 12, p. 529

15. A Plaintiff sued, as one of the public, to restrain a railway company from closing it. Held, that such a suit could not be maintained. *Thorne* v. *The Taw Vale Railway and Dock Company.* vol. 13, p. 10

16. Upon the construction of a contract between an individual and a railway company, held that nothing had taken place which could give him a right to use horses, as the moving power, against the will and consent of the company. *Ibid.*

17. It appeared very probable, that at the time of the filing of the bill, a company, which was authorized to make 150 miles of railway, intended to complete twenty-three miles only, and abandon the rest. Upon a motion to restrain them, it appeared that the company had since abandoned the whole. The Court was of opinion, that if the case had remained as it was at the time of the filing of the bill, the Plaintiff would have been entitled to the injunction; but refused it, on the ground of the alteration in the existing circumstances, and gave no costs. *Logan* v. *The Earl of Courtown.* vol. 13, p. 22

18. Contract entered into for the purchase of land between a projected railway company and a landowner, held absolute, and not conditional on the formation of the railway. *Lord James Stuart* v. *The London and North-Western Railway Company.* vol. 15, p. 513

19. Contract for the purchase of "the land required" for a railway, with provisions as to roads, culverts, &c., held not too vague to be specifically performed. *Ibid.*

20. As to the authority of a secretary to a railway company to bind the company by an admission. *Bell* v. *London and North-Western Railway Company.* vol. 15, p. 548

21. During a contest before parliament, two competing railway companies came to an agreement for dividing the profits earned by both in a given proportion, and for regulating the traffic. Lord *Cottenham* and the Q. B. held that the arrangement was not invalid, as a fraud upon the public by creating a monopoly, and the Master of the Rolls considered that Lord *Cottenham* had decided inferentially, that such a contract was not *ultra vires*. But, held by L. J. *Knight Bruce*, that it was a breach of trust, and by L. J. *Turner*, that it was *ultra vires*, and contrary to public policy. *Shrewsbury &c. Railway Company* v. *London, &c., North-Western Railway Company.* vol. 16, p. 441

22. A railway company cannot, in the absence of any authority contained in their acts of incorporation, become proprietors of steamboats and carriers of passengers and goods by sea. *Ibid.*

23. A railway company, having applied for an act to extend their line, was opposed by a landowner; whereupon an agreement was entered into between the solicitor of the company and the landowner, that the latter should withdraw his opposition, and if the act passed, that the company should purchase his land on certain terms. Neither the appointment of agent nor the agreement was under the seal of the corporation. The act passed, but the company did not take the land. The Court, considering that the company had done no act to take the benefit of the contract, refused a decree for specific performance, and declined to order the company to admit the validity of the contract, in order to enable the Plaintiff to try his right at law. *Gooday* v. *The Colchester, &c. Railway Company.* vol. 17, p. 132

24. A company having given notice to take land under their compulsory powers, and the price being fixed, the contract is complete, and this Court will entertain a suit by the company for specific performance, but they will not, though successful, obtain their costs, if they could have derived the same advantage by proceeding under their act. *The Regent's Canal Company* v. *Ware.* vol. 23, p. 575

25. It seems doubtful, whether, where a public company have, under their compulsory powers, given notice to the landowner to take his land, and nothing more is done, a suit for specific performance can be maintained. *Ibid.*

26. The Defendants were by act of parliament authorized to make a short line uniting their main line with the Plain-

tiff's line, but the 12th section prohibited the defendants opening their main line until the junction should be completed. In default of the Defendants making the junction within a specified time, the Plaintiffs were authorized to make it. The Defendants proposed opening their main line before the completion of the junction. Held, that the Plaintiffs had a sufficient interest to entitle them to an injunction to prevent this proceeding, and that it was not necessary to resort to an information for that purpose, and an injunction was granted, although the delay in opening the main line might be prejudicial to the public. *The Cromford and High Peak Railway Company* v. *The Stockport, Disley and Whaley Bridge Railway Company.* vol. 24, p. 74

27. An agreement entered into between a landowner and the promoters of a bill in parliament authorizing the construction of a railway, held, not binding on the company after its incorporation, the company having done no act to adopt it. *Williams* v. *The St. George's Harbour Company.* vol. 24, p. 339

28. Whether an agreement to buy off the opposition of a landowner to a railway bill before parliament can be supported, *quære*. *Ibid.*

29. The 8 & 9 *Vict.* c. 42 (1845) enabled canal companies to become carriers on canals, to lease their canals and to take leases of others. Subsequently (1856), a railway company obtained an act, enabling them to purchase the *X.* canal and to exercise all its "rights, powers and privileges." Held, that after the purchase, the railway company had authority to take a lease of canal *Y.*, under the first act, this being a "right, power and privilege" possessed by canal *X.*, and which passed, on its sale, to the railway company. A motion by a shareholder of the railway for an injunction to restrain the purchase of canal *Y.* was refused. *Rogers* v. *The Oxford, Worcester and Wolverhampton Railway Company.* vol. 25, p. 322

30. A judgment creditor and debenture holder of a railway company held neither entitled to a foreclosure nor sale. But inquiries were directed. *Furness* v. *The Caterham Railway Company.* vol. 25, p. 614

31. A railway company gave notice to a tenant at will to take part of the lands, and they were allowed to take possession and complete their line. Afterwards, a person, who had subsequently to the notice purchased one-ninth of the land, filed a bill, merely praying an injunction to restrain the railway company from entering upon, continuing in possession of, or otherwise interfering with, the land. The bill was dismissed with costs. *Carnochan* v. *The Norwich and Spalding Railway Company.* vol. 26, p. 169

32. Notices by railway companies to take land cannot be treated higher than contracts, and after great delay in proceeding on such notices, they will be considered abandoned. *Hedges* v. *The Metropolitan Railway Company.* vol. 28, p. 109

33. Notice to take part of a property was given by a company ten days before the expiration of their compulsory powers. A counter notice was given by the landowner requiring them to take the whole. The company did not follow up their notice, but, fourteen months afterwards, gave the landowner notice of an intended application to parliament to abandon their undertaking. This they did not obtain, and, nineteen months after the first notice, the company proceeded to obtain the lands compulsorily. The landowner filed a bill for an injunction, stating that the original notice was not *bonâ fide* given; that the company, in their subsequent proceedings, had treated the notice as abandoned, and that in the belief of such abandonment, the Plaintiff had forborne taking proceedings. Held, that the Plaintiff was entitled to relief, the company's demurrer to the bill was consequently overruled, and the injunction was, on a subsequent motion, granted. *Ibid.*

34. The Plaintiffs had power of running over part of the Defendants' line of railway, with carriages of the construction which the regulations of the latter should "reasonably require." The regulations made by the Defendants required the draw-bars and couplings to be of a specified description; that every vehicle should have a break acting on two wheels, and buffers at each end of 12-inch diameter and 4-inch stroke. The Plaintiffs alleged these regulations to be unreasonable. Held, first, that the burden was on the Plaintiffs to prove the unreasonableness; secondly, that the regulations were reasonable and indispensable in passenger trains, and were reasonable and useful in goods and luggage trains; thirdly, that the fact of the regulations not having been enforced rigorously against the Plaintiffs, for some time, was no reason for not enforcing them strictly afterwards; fourthly, that the Plaintiffs had a right to insist that they should not be treated differently from other persons in these matters; and lastly, that a clause in the act to refer differences to arbitration did not oust the jurisdiction of the Court to prevent the enforcement of reasonable regulation. *The Rhymney Railway Company* v. *The Taff Vale Railway Company.* vol. 29, p. 153

35. A railway company entered into a con-

tract with a tenant for life of property within their line, who appointed a surveyor under "The Lands Clauses Consolidation Act" (8 & 9 *Vict.* c. 18, s. 9). The company would neither appoint their valuer nor complete the contract. The Court directed an inquiry whether the price agreed upon was reasonable and proper. *Baker* v. *The Metropolitan Railway Company.* vol. 31, p. 504

36. A railway company contracted for the purchase of lands. Held, that they must complete within a reasonable time, and that they were not entitled to insist that they might complete whenever, within the limit of their compulsory powers, they wanted the land. *Ibid.*

37. Where a railway company, acting *bonâ fide*, has made a mistake as to the lands they have valued and taken possession of, and the question between the company and the landowner is merely one of value, this Court will not, by injunction, stay the works on the property taken. The Court, in such cases, has regard to the injury which may be done to the public. *Wood* v. *The Charing Cross Railway Company.* vol. 33, p. 290

RECEIVER.

1. A receiver being appointed to get in the outstanding estate of a testator, the Court gave leave to a party who was willing to pay a sum due to the estate into Court to do so, in order to save the poundage which would have been incurred if it had passed through the hands of the receiver. *Haigh* v. *Grattan.* vol. 1, p. 201

2. At the instance of a mortgagee of a *West India* estate, a receiver and manager had been appointed. Held, that he was not entitled to the produce of crops severed and shipped to the consignee of the mortgagor prior to the appointment, although there had been no conversion prior to that time. *Codrington* v. *Johnstone.* vol. 1, p. 520

3. Two parties, who were entitled to property in equal moieties, made an equitable mortgage of it; one of the mortgagors was out of the jurisdiction, and the whole rents were received by the other. The Court granted a receiver. *Holmes* v. *Bell.* vol. 2, p. 298

4. An appeal was pending in the Privy Council from a sentence of the Ecclesiastical Court rejecting the testamentary papers of the deceased and declaring an intestacy; limited administration *pendente lite* had ceased by the sentence, and an inhibition had issued from the Privy Council which inhibited the Ecclesiastical Court proceeding. There being no person in the mean time authorized to protect and collect the estate: Held, that these circumstances, alone, justified the appointment of a receiver by this Court.

Held also, that a receiver might in such case be granted on the application of a party appellant, who, assuming the decision of the Ecclesiastical Court to be correct, had no interest in the estate of the deceased.

And thirdly, that the circumstance of there being no person in whose name an action might be brought to recover the property is not a sufficient objection to the appointment of a receiver. *Wood* v. *Hitchings.* vol. 2, p. 289

5. The allowance to a receiver appointed by the Court depends on the degree of difficulty or facility experienced in the collection. There is no general rule as to the amount.

The report of the Master allowing to the receiver a gross salary of 5*l.* per cent. on considerable receipts, composed of large sums due for mortgages, annuities, rents, &c., referred back for review. *Day* v. *Croft.* vol. 2, p. 488

6. A receiver, who had been appointed in consequence of the misconduct and incapacity of trustees under a will, discharged, upon the appointment of new trustees by the Court.

A receiver is appointed for the benefit of all parties interested, and will not therefore be discharged, merely on the application of the party at whose instance he was appointed. *Bainbrigge* v. *Blair.* vol. 3, p. 421

7. *A. B.* had obtained an order in the Exchequer for payment of costs, against a party to a suit in this Court, who was tenant for life of certain property over which a receiver had been appointed, with directions to pay her the rents. The Court gave leave to *A. B.*, notwithstanding the appointment of receiver, to sue out and execute such writs as he might be advised. *Gouch* v. *Haworth.* vol. 3, p. 428

8. A bill for a receiver, pending a litigation as to probate, ought not to seek discovery in reference to the merits on that litigation. *Wood* v. *Hitchings.* vol. 3, p. 504

9. A receiver appointed for the benefit of two infant tenants in common, not discharged on one coming of age. *Smith* v. *Lyster.* vol. 4, p. 227

10. A receiver of a partnership granted in a case where no misconduct in management was alleged, on the ground that the Defendant insisted on a legal objection as destroying all right of his partner to a share in the partnership. *Hale* v. *Hale.* vol. 4, p. 369

11. A mortgagee having the legal estate is not entitled to a receiver appointed by the Court, although the tenants may be numerous, and the rents difficult to collect. *Sturch* v. *Young.* vol. 5, p. 557

12. In 1812 the executors of a receiver applied to pass his accounts and pay in the balance, this was ordered, but payment was not made. In 1841 they were ordered to pay in the balance without interest, and it was held that they could not object the want of assets. *Gurden* v. *Badcock*. vol. 6, p. 157

13. *A.* was appointed receiver, but the solicitor in the cause alone acted and paid over the rents to the tenant for life. An incumbrancer compelled the receiver to pay the same amount into Court and after payment of his claim, there remained a surplus, which was paid to the tenant for life. Held, that *A.* could not, on petition, obtain repayment by the tenant for life or out of the estates. *Ibid.*

14. Difficulties in appointing a receiver of a partnership upon motion. *Madgwick* v. *Wimble*. vol. 6, p. 495

15. Surviving partners insisted on continuing the partnership with the assets of a deceased partner. The Court thought the representatives of the latter entitled to a receiver. *Ibid.*

16. A receiver ought not to present a petition, or originate proceedings in the cause. There are, however, exceptions to the rule. *Ireland* v. *Eade*. vol. 7, p. 55

17. In a suit in which the priorities of different incumbrancers on an estate were determined, a receiver had been appointed. *A. B.*, who claimed to be first incumbrancer, not having been made a party to that suit, filed a bill of his own to establish his right. Held, that the receiver was not a necessary party, and but for the decision in *Lewis* v. *Lord Zouche*, 2 *Simons*, 388, he would have been considered an improper party. *Smith* v. *Earl of Effingham*. vol. 7, p. 357

18. A receiver had been accustomed to bring in his accounts very irregularly in point of time, and thereby the actual balances in his hands never clearly appeared. He was specially ordered to bring in his accounts before a given day in every year, accompanied with an affidavit, shewing the actual balance in hand; inquiries were also directed as to his former balances, and he was ordered to pay the costs of the application. *Bertie* v. *Lord Abingdon*. vol. 8, p. 53

19. Proceedings were commenced in the common law side of this Court, against the surety of a receiver, to compel the payment of the balance ordered to be paid to the Plaintiff. The surety paid the amount to the solicitor prosecuting the proceedings, and then applied to have his recognizance vacated. The petition was served on the Plaintiff, who did not appear. The Court refused to make the order, but directed the Plaintiff to be served with a notice that the order would be made on a given day, unless the Plaintiff shewed cause to the contrary. The Plaintiff not then appearing, the order was made. *Mann* v. *Stennett*. vol. 8, p. 189

20. At the hearing of a suit for redemption, the Court will not, on the application of the Defendant, grant a receiver against the Plaintiff, the mortgagor in possession, none being prayed by the bill. Whether it can be done by petition, *quære*. *Barlow* v. *Gains*. vol. 8, p. 329

21. Generally, the receiver in a cause ought not to make any application to the Court: if he finds himself in circumstances of difficulty, he should apply to the Plaintiff to make the necessary application, and on his default the receiver may then properly apply to the Court. *Parker* v. *Dunn*. vol. 8, p. 497

22. An adverse application was made against a receiver, by a party to the cause, which was refused with costs. The applicant being wholly unable to pay the costs: Held, that the receiver was entitled to be indemnified, and have his costs, as between solicitor and client, out of the fund in hand belonging to incumbrancers. *Courand* v. *Hanmer*. vol. 9, p. 8

23. A receiver will not be appointed where the rights, as between the Plaintiff and Defendant, are doubtful, if the Defendant has obtained the legal estate without fraud, and no case of danger as to his security is alleged. *Lancashire* v. *Lancashire*. vol. 9, p. 120

24. The Plaintiff sued as heir, and the answer neither admitted nor denied that he held that character. Held, that this alone was not a sufficient ground for refusing a receiver. *Ibid.*

25. A husband contracted for a lease of some premises, and he afterwards induced the trustees of his marriage settlement, who held moneys for the separate use of his wife, without power of anticipation, to act in breach of their trust, and to purchase the property. The property was conveyed to the trustees, and, by a deed executed by the husband and wife, it was declared that it should be held for their indemnity and on the trusts of the settlement. The husband laid out very considerable sums of money in building and repairs, and, with the consent of the wife, was permitted to receive the rents. After some years, disputes arose; the trustees insisted on receiving the rents, and proceeded at law to enforce their rights; whereupon the husband filed a bill against the trustees and his wife, claiming a lease under the agreement, and asking for a sale of the property, and for the application of the produce, first, in replacement of the trust funds, and afterwards, in reimbursing the

Plaintiff his outlay. A motion for a receiver was refused with costs. *Wiles* v. *Cooper.* vol. 9, p. 294

26. A receiver of a moiety of an estate claimed by the Plaintiff as tenant in common with the Defendant who was in possession of the whole, granted under the circumstances. *Hargrave* v. *Hargrave.* vol. 9, p. 549

27. *A.* and *B.* were trustees and executors. *A.* paid more than he received, in the expectation of repayment out of a mortgage forming part of the assets. *A.* died and *B.* refused to act. In an administration suit, a receiver of the mortgage was appointed against the representatives of *A.* *Palmer* v. *Wright.* vol. 10, p. 234

28. A railway company, without the leave of the Court, took proceedings under the Lands Clauses Consolidation Act, to take possession of lands in the possession of the receiver under the Court. On an *ex parte* motion they were restrained. *Tink* v. *Rundle.* vol. 10, p. 318

29. The existence of a suit to recall probate in which the probate has been ordered into Court is not of itself a sufficient ground for appointing a receiver. *Newton* v. *Ricketts.* vol. 10, p. 525

30. Motion by incumbrancer on a fellowship for a receiver and injunction, refused. *Berkeley* v. *King's College, Cambridge.* vol. 10, p. 602

31. A receiver appointed after decree upon motion, in an urgent case. *Thomas* v. *Davies.* vol. 11, p. 29

32. Where a reference has been made to appoint a receiver, the Court will not, by consent even of the parties, dispense with the usual security. The proper course is, for the parties, of their own authority, to nominate a receiver, and then to apply for liberty for him to act without security. *Manners* v. *Furze.* vol. 11, p. 30

33. A receiver was appointed over a testator's real property, and afterwards by foreclosure, another estate became comprised in the property, and an order was made, that the receiver should include the rents in his future accounts. Held, that the receiver, with the approbation of the Master, had power, without a special order of Court, to set and let the foreclosed estate. *Duffield* v. *Elwes.* vol. 11, p. 590

34. A motion by a Defendant for a receiver is irregular, even in a case where one executor filed a bill against his co-executor, insisting that a receiver was necessary. *Robinson* v. *Hadley.* vol. 11, p. 614

35. Rules of practice upon applications to discharge receivers and vacate their recognizances. *Lawson* v. *Ricketts.* vol. 11, p. 627

36. If the balance is to be paid into Court, the same order may direct the recognizances to be vacated; but, if the balance is to be paid in any other mode, a second application becomes necessary. *Lawson* v. *Ricketts.* vol. 11, p. 627

37. In a suit relating to two annuities secured on real estate, and to which the grantor was not a party, a receiver was appointed "of the incomes of the outstanding trust property in the pleadings mentioned." The receiver entered and continued in possession of the real estate, for six years. The Court refused to restrain the grantor by injunction from distraining on the tenants. *Crow* v. *Wood.* vol. 13, p. 271

38. An order for a receiver ought to state distinctly, on the face of it, over what property the receiver is appointed. *Ibid.*

39. After verdict, but before judgment, the Master of the Rolls appointed a receiver against the party in possession, an order *nisi* for a new trial being pending; but the Lord Chancellor reversed the decision. *Bainbrigge* v. *Baddeley.* vol. 13, p. 355

40. A sheriff seized the goods of a tenant of lands, over which a receiver had been appointed. He retained half a year's rent and paid over the balance to the judgment creditor. The receiver claimed the rent and the Plaintiff brought an action against the sheriff, who applied to the Court for protection as between these adverse claims. The Court declined to interfere. *Try* v. *Try.* vol. 13, p. 422

41. Order for a receiver made before appearance against a Defendant, who had absconded to avoid service. *Dowling* v. *Hudson.* vol. 14, p. 423

42. Receiver against a mortgagee in possession granted after decree, on the application of another mortgagee, a Co-defendant. *Hiles* v. *Moore.* vol. 15, p. 175

43. *A. B.*, the third mortgagee, took possession, and then bought up the first mortgage. Having retained possession many years, and received a considerable sum, a receiver was appointed against him on the application of the second mortgagee, the affidavit of *A. B.* not satisfactorily shewing that anything remained due on the first mortgage. *Ibid.*

44. Where *A.* and his incumbrancers, *B.*, *C.*, and *D.* joined in the appointment of a receiver, who covenanted to keep down the incumbrances, according to their priorities, and pay the surplus to *A.* Held, that a subsequent mortgagee from *A.* could not sustain a bill against the receiver and *A.* for an account of the rents and an injunction against paying the surplus to *A.* in the absence of *B.*, *C.*, and *D.* *Ford* v. *Rackham.* vol. 17, p. 485

45. A receiver will not be appointed without sureties, though not objected to, if persons not competent to consent are interested. *Tylee* v. *Tylee.* vol. 17, p. 583

46. If a testator, when he makes his will, is aware of the circumstances and position of his executors and trustees, the Court will not lightly interfere with their discretion; and although the circumstance of an executor being an insolvent may be a reason for appointing a receiver, yet, if the testator was aware of his insolvency, the Court will not, on that ground alone, take the property out of his hands. *Stainton* v. *Carron Company and Others.* vol. 18, p. 146

47. After a receiver of charity property had been appointed, *W. H.*, the alleged churchwarden of *St. F.*, insisting that the chapel within the hospital was the parish church of *St. F.*, and in order, as he alleged, to try the right, forcibly prevented the chaplain performing divine service therein, as he had usually been accustomed. The Court restrained *W. H.* from interrupting or interfering with the performance of divine worship in the chapel. *Attorney-General* v. *St. Cross Hospital.* vol. 18, p. 601

48. A tenant who had not attorned to the receiver, ordered to pay him the arrears of rent in fourteen days and the costs of the application. *Hobson* v. *Sherwood.* vol. 19, p. 575

49. The Court will not permit its receiver to be interfered with or dispossessed of the property, nor will it allow payment to him to be intercepted, although the order appointing him may be perfectly erroneous. An application must first be made to the Court for leave. *Ames* v. *Trustees of Birkenhead Docks.* vol. 20, p. 332

50. In a suit on behalf of a number of grantees of rent-charges on the same property, who had powers of distress and entry, a receiver was appointed to protect the property pending the litigation, it being untenanted, and it being impossible to obtain tenants, for want of protection against the powers of the several grantees of the rent-charges. *White* v. *Smals.* vol. 22, p. 72

51. Where a suit is instituted merely for the protection of the assets pending a litigation for probate in the Ecclesiastical Court, the practice of the Court is, upon the grant of probate, to discharge the receiver, stay all proceedings in the suit and dispose of the costs. *Barton* v. *Rock.* (No. 2.) vol. 22, p. 376

52. In such a suit, for which there was not a reasonable foundation, the Court ordered the Plaintiffs to pay all the costs, though a receiver had been appointed. *Ibid.*

53. There being some disagreement between three trustees, the majority acted alone and took securities in their own names, omitting the name of the dissentient trustee. Held, that the Plaintiff, who was interested in the trust property, was entitled to a receiver. *Swale* v. *Swale.* vol. 22, p. 584

54. The testator appointed, as trustee and executor, a person who, for many years, had been the paid receiver and manager of his estate. The tenant for life being an infant, the Court continued the executor as receiver at a salary. *Newport* v. *Bury.* vol. 23, p. 30

55. Held, upon a petition to discharge a receiver and pay over the money in Court and the balance, the receiver, though served, ought not to appear, and his costs were not allowed. *Herman* v. *Dunbar.* vol. 23, p. 312

56. *Ex parte* motion, before appearance, for a receiver refused. *Caillard* v. *Caillard.* vol. 25, p. 512

57. Where an Act of Parliament authorizes a corporation to mortgage its tolls, &c., the Court of Chancery has jurisdiction to appoint a receiver of them, though no such express power is given by the Act. But the receiver over such property ought not to have committed to him any powers of management which ought properly to be exercised by the Corporation itself. *De Winton* v. *The Mayor, &c. of Brecon.* vol. 26, p. 533

58. A judgment creditor cannot (without leave of this Court) attach moneys in the hands of its receiver, which have been directed to be paid by him to the judgment debtor. *De Winton* v. *The Mayor of Brecon.* (No. 2.) vol. 28, p. 200

59. A judgment creditor, who had recovered moneys of the judgment debtor in the hands of a receiver under an order of a court of law, was ordered to repay it, and he was directed, together with the receiver (who had not resisted the payment to him) to pay the costs of the application. *Ibid.*

60. A party interested may apply at once to prevent a receiver applying the moneys in his hands in a manner contrary to the directions of the Court, and need not wait until he passes his account. *Ibid.*

61. The Court refused, on the application of one of several equitable tenants in common, to appoint a receiver over the whole estate, against an equitable tenant in common in possession, there being no exclusion, but limited the appointment of receiver to the share of the Plaintiffs only. *Sandford* v. *Ballard.* vol. 30, p. 109

62. Receiver granted under special circumstances, at the instance of a first mortgagee having the legal estate. *Ackland* v. *Gravener.* vol. 31, p. 482

63. *A.*, together with *B.* as his surety, mortgaged their respective estates for *A.*'s debt; but it was provided that recourse should not be had to *B.*'s estate unless *A.*'s estate should prove insuf-

ficient. In a suit for foreclosure, *B.* insisted that the insufficiency of *A.*'s estate had not been shewn. The Court granted a receiver over *B.*'s estate, although the legal estate was vested in the mortgagee. *Ackland* v. *Gravener.* vol. 31, p. 482

64. A four days' order seems still to be the proper process for compelling a receiver to pay over his balances in accordance with an order of the Court. *Whitehead* v. *Lynes.* vol. 34, p. 161

RECITALS.

[*See* PARCELS.]

1. The plain effect of the operative part of a deed cannot be cut down by the recitals. *Holliday* v. *Overton.* vol. 14, p. 467
2. Where the recital and the operative part of a deed are at variance, the latter must be acted on until the deed has been reformed. In a suit to reform the instrument, the Court would be enabled, from the circumstances, to judge which was erroneous. *Hammond* v. *Hammond.* vol. 19, p. 29
3. In 1844 *A. B.* agreed to give to his creditor a security on the debt then due, "or which might thereafter become due to him" from a company. This was carried into effect by a deed in 1845, which, after reciting the agreement, assigned all sums claimed to be due, and which he might thereafter recover. Held, that the deed passed all sums due at its date, but nothing subsequent. *Scott* v. *Scott.* vol. 24, p. 263
4. General words in the operative part of a deed controlled by the recitals. *Childers* v. *Eardley.* vol. 28, p. 648
5. Rule of construction where the operative part of a deed is less extensive than the recital. *Barratt* v. *Wyatt.* vol. 30, p. 442
6. A covenant in a deed, if ambiguous, will be controlled by the recitals. *Selby* v. *Crystal Palace District Gas Company.* vol. 30, p. 606
7. Where they are inconsistent, the operative part of a deed prevails over the recitals; but where the operative part is ambiguous, the recitals may be resorted to to explain the ambiguity. *Young* v. *Smith.* vol. 35, p. 87
8. By her will, the testatrix gave 1,000*l.* amongst the children of her niece. By a codicil, she recited that she had, by her will, given 1,000*l.* to *F. B.* (a son of her niece), and she declared that the said legacy should not be payable until twenty-one, with power of maintenance. Held, that the erroneous recital constituted no gift, and that *F. B.* was only entitled to a share of the 1,000*l.* *Mackenzie* v. *Bradbury.* vol. 35, p. 617

RECORD.

[*See* IRREGULARITY.]

1. A petition for a commission to examine witnesses, and the order thereon, obtained by consent, were intituled in an original and revived suit, but the interrogatories were intituled in the original cause only. Held, that the interrogatories were wrongly intituled, and the depositions were suppressed. *Pritchard* v. *Foulkes.* vol. 2, p. 133
2. An order intituled in a non-existing cause discharged for irregularity. *West* v. *Smith.* vol. 3, p. 306
3. Held not irregular to intitule an order for a commission to examine witnesses, or the commission or the return thereof, in a short form, as a suit in which "*A.* and others are Plaintiffs," and "*B.* and others Defendants." *Lincoln* v. *Wright.* vol. 4, p. 166
4. Pending the examination of witnesses, a new next friend of the infant Plaintiffs was appointed. Held, that it was not necessary to notice the alteration in the proceedings under the commission. *Ibid.*
5. An order, obtained on affidavit of service, discharged with costs, on the ground of a misnomer of a party in the affidavit. *Salomon* v. *Stalman.* vol. 4, p. 243
6. An answer directed to be taken off the file, on the ground of the misnomer of the next friend of the infant Plaintiff. *Fry* v. *Mantell.* vol. 4, p. 485
7. After publication, a bill filed by husband and wife was amended by making the wife sue by her next friend. Held, that the evidence was still receivable. *Davis* v. *Prout.* vol. 7, p. 288

RECOUPING.

[*See* FOLLOWING ASSETS, ORDER OF ASSETS, PAYMENT (DEBTS AND LEGACIES).]

RECTIFICATION.

[*See* REFORMING DEEDS.]

REDEMPTION.

[*See* MORTGAGE (REDEMPTION).]

REDUCTION INTO POSSESSION.

1. A husband executed a settlement. Held, that he had not by so doing reduced the fund of the wife's into possession. *Pringle* v. *Pringle.* vol. 22, p. 631
2. Money of a wife was, by the direction of her husband, paid to the trustees of a post-nuptial settlement, which was not binding on the wife. Held, that her right by survivorship was destroyed, the

property having, by these means, been reduced into possession. *Hamilton* v. *Mills*. vol. 29, p. 193

REFERENCE.

[*See* EXCEPTIONS, INQUIRIES, REFERENCE (GIFT BY), TITLE (REFERENCE AS TO).]

REFERENCE (GIFT BY).

[*See* CROSS-REMAINDERS, IMPLICATION (GIFT BY), LAST ANTECEDENT, SUBSTITUTED LEGACY.]

1. An additional legacy (though not so expressed) held subject to the same incidents as the original legacy. A testator gave a legacy to a *feme covert* for her separate use, and by a codicil he gave to her a further annuity in addition. Held, that the latter was subject to the restriction for her separate use. *Day* v. *Croft*. vol. 4, p. 561
2. By deed, 10,000*l.* was settled on *A. B.* for life, with power to appoint to her children or their issue, and in default in trust for her children; power was also given to *A. B.* to appoint a life interest to her husband. Afterwards, by will, the settlor gave a similar sum "to be laid out for the sole benefit of *C. D.*, in the same manner, as nearly as might be, as the 10,000*l.*" secured for *A. B.* by the deed. Held, that *C. D.* was entitled to powers of appointment in favour of her children, their issue, and her husband; but that the children took nothing, except through the power. *Countess Berchtoldt* v. *Marquis of Hertford*. vol. 7, p. 172
3. A residue was given to the wife for life, and afterwards in separate moieties to different persons. One moiety was given over "in case of the death of any or either of them *before my said wife*," and the other "in case of the death of any or either of them," without specifying any period. Held, under the circumstances, that the gift over in both cases was to be construed on death "*before my said wife*." *Ive* v. *King*. vol. 16, p. 46
4. A testator gave his real and personal estate to his sister for life, and if she should have any family living at her decease, they should have "their due proportion of the property; and, in case of the demise of his sister's children, his two nephews were to stand in the same situation as his sister's children would have stood had they been living. Held, that such only of the nephews as survived the sister and the children took, and one of the nephews having died in her lifetime, that the other nephew was entitled to the whole residue. *Lewis* v. *Lewis*. vol. 17, p. 221
5. There were two devises to children in two different events. Held, that the terms of the second devise could not, by construction, be introduced into the first, so as to extend the estate thereby given. *Sturgis* v. *Dunn*. vol. 19, p. 135
6. *A. B.* gave the moiety of a house and other property to trustees, to sell and pay a number of annuities and legacies, and the residue to six persons. *C. D.* afterwards devised the other moiety of the same house to *A. B.*'s trustees, upon the same trusts, for the benefit of the same persons, and to and for the same ends, intents and purposes as were directed by *A. B.*'s will of and concerning her moiety of the house. Held, that the legatees and annuitants under *A. B.*'s will had no further interest in *C. D.*'s moiety than to have their bequests paid in full. *Baskett* v. *Lodge*. vol. 23, p. 138
7. A testator devised an estate to *A.* and *B.* successively for life, and after their deaths, to sell and divide the produce between his grandchildren who should be living at the decease of the survivor of *A.* and *B.*, except his grandsons *Edward* and *John*, neither of whom was to receive anything; and he directed that the shares, which would be otherwise payable to them, should be payable to his granddaughter *Susannah*, "in addition to her own share." *Edward* and *John* survived the tenants for life, but *Susannah* predeceased them. Held, that the two shares passed to the representatives of *Susannah*. *King* v. *Tootel*. vol. 25, p. 23
8. A testator gave all his personal estate to his wife for life, and he bequeathed 40*l.* to *A. B.*, and other pecuniary legacies, all of which were payable at her death. By a first codicil, he gave a legacy of 200*l.* to *C. D.* (who was not mentioned in his will), and he directed that all things in his codicil should be performed as if the same were so declared in his will. By another codicil, he revoked the legacy of 40*l.* to *A. B.* and gave her 50*l.* Held, that the legacy of 200*l.* was payable at the death of the testator, but that the payment of the legacy of 50*l.* was postponed until the death of the widow. *Giesler* v. *Jones*. vol. 25, p. 418
9. Bequest to the children of a deceased niece who should be living at the testator's death, followed by a bequest to a nephew for life, and after his decease, upon the like "trusts" for the benefit of his issue, and subject to the same powers, "limitations," &c. in respect to his issue as those expressed as to the niece's children. The nephew had no child living at the testator's death, but he afterwards had one child born. Held, that such child was entitled to the second legacy. *Yardley* v. *Yardley*. vol. 26, p. 38
10. A father, having eight children, de-

vised his estate to six of them equally. Afterwards, the wife's father devised another property unto her children, to be vested at the like times, with like benefit of survivorship and provision for maintenance, and in like manner, in all other respects, so far as the nature of the property and the difference of tenure would permit, as the said children were entitled to the estate of their father under the dispositions and limitations contained in his will. Held, that the eight children participated in the second devise. *Pigott* v. *Wilder*. vol. 26, p. 90

11. A testator bequeathed his personal estate to his wife absolutely, and he devised two real estates to her for life, and after her death, on trust for sale and division amongst other parties. Having sold one of the estates, he made a codicil changing his trustee, and authorizing the sale of the remaining estate at any time, and he gave the produce thereof to his wife for life, and then "upon the trusts and for the intents and purposes" in his will expressed and declared as concerning all his real and personal estate; and in all other respects he confirmed his will. Held, that the produce of the estate was not divisible amongst all the devisees and legatees rateably, but was subject to the trusts declared by the will. *Baker* v. *Richards*. vol. 27, p. 320

12. By his will, the testator gave a legacy "equally between my brothers and sisters now living;" and he directed that their shares should not lapse by their deaths in his lifetime, but should go to their executors. By a codicil of the same date, he bequeathed another legacy "between my brothers and sisters in like manner as I have directed by my will." Held, that the class mentioned in the codicil were not the same as that in the will; that the "manner" referred to the mode in which the class were to take, and not to the class itself, and consequently that the representatives of a sister who predeceased the testator took no interest in the second legacy. *Re Wilder's Trusts*. vol. 27, p. 418

13. A testator gave a legacy to his daughter *Lucy*, and gave to her and her husband a similar power and control over it as was given by the settlement of her sister. And he directed, that if *Lucy* should die without issue, her legacy should revert to his surviving children. The settlement of the other daughter gave to her and her husband a joint power, and in default of appointment to the surviving husband, a separate power to appoint to their children, and in default of children, a separate power to the daughter to appoint the fund to any one by will. Held, that as there was an inconsistency the will must be read strictly, and that *Lucy* had no power of testamentary appointment, but only a joint power with her husband to appoint to children. *Crossman* v. *Bevan*. vol. 27, p. 502

14. The trustees of a settlement had vested in them a power of leasing during the minority of the beneficial owners, a power of sale and exchange at the request of the tenants for life, and a power to cut timber, but they had no legal estate, except to preserve contingent remainders. The first tenant for life devised his own estates to other trustees in fee, to the same uses and subject to like powers as the settled estates stood limited. Held, that the powers over the devised estates were exercisable by the trustees of the settlement, and not by the trustees of the will. *Taylor* v. *Miles*. vol. 28, p. 411

15. Bequest of "everything to my trustees under my marriage settlement, adding the name of *J. P.* to the same, for the benefit of my wife and children." Held, that the testator's estate was held subject to the trusts of his marriage settlement. *Pydus* v. *Cottell*. vol. 30, p. 106

16. A testator gave his residue to his grandchildren, the children of his son and daughter (*A.* and *B.*) living at his decease, with a gift over to his brothers and sisters, in case any died before attaining a vested interest. By a codicil, he gave 4,000*l.*, the interest to be paid "in equal moieties" to *A.* and *B.* "during their lives, and at their decease the said sum of 4,000*l.* to be for the benefit of his grandchildren, agreeably to the instructions contained in his will." *A.* died, living *B.* Held, that a moiety of the 4,000*l.* became, upon the death of *A.*, divisible amongst his children. *Archer* v. *Legg*. vol. 31, p. 187

17. By a settlement, trustees were to raise 2,000*l.* for *A.* for life, with remainder to her children, with powers for maintenance, advancement "or otherwise," and in default of children the fund was given to *C.* A like sum was given to *B.* for life, with remainder to her children, with the like provision for their maintenance "and otherwise," as before expressed, in respect to the 2,000*l.* given to *A.* and her children, "and otherwise in like manner, to all intents and purposes, as if such trusts and provisions were there fully repeated." Held, that this included the gift over to *C.*, and that on the death of *B.* without children, *C.* was entitled to the second sum of 2,000*l.* *Re Shirley's Trusts*. vol. 32, p. 394

18. Construction of a referential trust. A testatrix directed trustees to make an investment, and out of the dividends to pay annuities of 100*l.* each to her two nieces and her nephew for life, and the capital to their children respectively,

and to apply 100*l.* a year in the maintenance of the children of *Daniel*, a deceased nephew, until twenty-one, when she gave them the capital fund producing this annuity. She bequeathed her residue to her two nieces and nephew and the children of *Daniel* "in equal shares, in like manner as was thereinbefore mentioned with respect to the annual sums of 100*l.* bequeathed to them respectively." Held, that the children of *Daniel* took one-fourth only of the residue. *Eames* v. *Austes*. vol. 33, p. 264

19. A testator devised a real estate to his three daughters equally in remainder, and he provided that if "any of them should die and leave issue, then such issue should succeed to the mother's share in that his will." He afterwards gave the residue of his estate and effects to the same daughters and to his two sons in possession. Held, that the issue of the daughters took no interest in the daughters' share in the residue. *Tibbs* v. *Elliott*. vol. 34, p. 424

REFERENTIAL TRUSTS.

[*See* REVERENCE (GIFT BY).]

REFORMING DEEDS AND INSTRUMENTS.

[*See* MISTAKE.]

1. On the 6th of *June*, upon a contemplated marriage, the lady's father proposed during his life to allow his daughter 200*l.* a year, to continue if she died in her father's life leaving children; but if she died in his lifetime without issue, then 100*l.* to the husband during the father's life. The father, in a letter to his solicitor, also stated that he wished the husband to have 150*l.* a year in the event of his daughter's death without issue; the proposal was agreed to, and a settlement prepared and executed, dated the 8th of *July*, whereby the father covenanted, during his life, to pay an annuity of 200*l.* to the husband and his assigns. The husband died insolvent, leaving his wife and three children. After his death, the settlement was rectified upon the production of the proposals, and the evidence of the solicitor who prepared the settlement, that he had prepared the settlement from the proposals which he thought he had carried into execution; and the wife was declared entitled to the annuity as against the husband's representatives. *Pearce* v. *Verbeke*. vol. 2, p. 333

2. A husband agreed to pay a sum of money, on his being held next of kin of *A. B.* and entitled to his property. The wife was and claimed to be such next of kin. The husband having succeeded in right of his wife, the Court held that there was an error and mistake in the agreement, which ought to be rectified, and decreed the husband to make the payment. *Stedman* v. *Collett*. vol. 17, p. 608

3. Parol evidence is admissible to make out a case for the rectification of a settlement, but the jurisdiction in such cases is to be cautiously exercised. *Barrow* v. *Barrow*. vol. 18, p. 529

4. The erroneous belief of both the husband and wife, on their marriage, that a particular property already stood settled, is no ground for rectifying a settlement so as to make it include it. *Ibid.*

5. To justify the Court in reforming an executed deed, it must appear that there has been a mistake common to both the contracting parties, and that the agreement has been carried into effect by this deed in a manner contrary to the intention of both. *Murray* v. *Parker*. vol. 19, p. 305

6. Upon a bill to set aside a deed *in toto* the Court will not reform it. *Hartopp* v. *Hartopp*. vol. 21, p. 259

7. On an application to reform a deed, the burden of proof lies on the Plaintiff, and the Court examines the evidence very jealously and must be convinced that there has been a mistake on the part of all the parties to the deed before it will reform it. *Wright* v. *Goff*. vol. 22, p. 207

8. A valid settlement was revoked by a subsequent deed, executed for a different purpose. The mistake being proved, the latter was reformed. *Ibid.*

9. A marriage settlement, dated in 1823, reformed in 1857, and after the death of the husband, upon proof of the written instructions, so as to give the property to the wife absolutely in the event of her surviving her husband and there being no issue (which events had happened). *Wolterbeek* v. *Barrow*. vol. 23, p. 423

10. In a suit to rectify a settlement, there being no blame imputable to any of the parties, the costs are payable out of the fund. *Stock* v. *Vining*. vol. 25, p. 235

11. Mode of rectifying a settlement by striking out the erroneous words and indorsing the decree. *Ibid.*

12. Prior to a mortgage, the mortgagee's valuer included certain articles in his valuation, and which the mortgagees expected would be comprised in their mortgage, but they were omitted from the deed. A bill to rectify the deed, by including them, was dismissed, there being no proof of a common mistake of mortgagor and mortgagees. *The Metropolitan Counties, &c. Society* v. *Brown*. vol. 26, p. 454

13. The Court will only rectify a deed when the mistake is shewn to be an error common to both parties, and it is essential that the extent of the rectification should be clearly ascertained and defined by evidence contemporaneous with or anterior to the deed. *Earl of Bradford* v. *Earl Romney*. vol. 30, p. 431

14. A fund in Court, which has, contrary to the intention of the parties, clearly proved, been included in a settlement, will only be paid out to the parties entitled under that settlement until it has been reformed; and this Court has no jurisdiction, upon petition, to reform an instrument. *In re Malet*. vol. 30, p. 407

15. A deed can only be rectified on the ground of mistake in cases where the mistake is common to all parties. *Bentley* v. *Mackay*. vol. 31, p. 143

16. Bill by two sisters to reform, on the ground of mistake, a deed entered into between them and their two brothers for making a provision for a third brother and his family, dismissed with costs. *Ibid.*

17. As to the necessity of a re-conveyance in cases of rectification of a settlement, and as to its retrospective operation. Form of decree in such a case. *Malmsbury* v. *Malmsbury*. vol. 31, p. 407

18. If a voluntary deed fail to carry into effect the intentions of the parties, it cannot be reformed, except with the consent of the donor. *Phillipson* v. *Kerry*. vol. 32, p. 628

19. A voluntary deed cannot be reformed in equity, as against the grantor. *Broun* v. *Kennedy*. vol. 33, p. 133

20. A marriage settlement was drawn, as the intended husband alleged, in a manner contrary to the agreement; but before the marriage he knew its contents and executed it under protest, and reserving his right to set it aside. Held, that he could not, after the marriage, sustain a suit to rectify the settlement. *Eaton* v. *Bennett*. vol. 34, p. 196

REFUNDING.

[*See* ORDER OF ASSETS, PAYMENT (DEBTS AND LEGACIES).]

REGISTRATION.

[*See* NOTICE, PRIORITY, SHAREHOLDER.]

1. Under the 1 & 2 *Vict.* c. 110, and 2 & 3 *Vict.* c. 11, if a judgment creditor neglects to re-register within five years, the judgment becomes inoperative, as to purchasers, mortgagees and creditors (both anterior and subsequent) until re-registration, from which period alone it then operates as against them. (*Sed quære* as to anterior judgments.) *Shaw* v. *Neale*. vol. 20, p. 157

2. An estate was mortgaged to *A.*, and afterwards to the Defendant; the Plaintiff subsequently obtained a registered judgment against the mortgagor. The Defendant then purchased the equity of redemption, without searching for judgments. On a bill to charge the equity of redemption with the judgment, the Court held, that the defence of "purchase for valuable consideration without notice" was available in this case; secondly, that on the evidence, no notice was proved; thirdly, that it was not incumbent on a purchaser to search for judgments. *Lane* v. *Jackson*. vol. 20, p. 535

3. An agreement to mortgage a *Middlesex* property does not come within the Registry Act; therefore, where the owner of property in that county had first mortgaged to *A.*, and then agreed to mortgage to *B.*, and had subsequently mortgaged to *C.*, and *C.* had registered, and *B.* had not. Held, that *C.* had not obtained priority over *B.* *Wright* v. *Stanfield*. vol. 27, p. 8

4. An unregistered equitable charge on the equity of redemption of a property in *Middlesex* postponed to a subsequent registered mortgage of it. *Moore* v. *Culverhouse*. vol. 27, p. 639

5. Judgments against executors and administrators need not be registered in the Common Pleas, under the 23 & 24 *Vict.* c. 38, s. 3, in order to retain their preference in the administration of the estate. *Jennings* v. *Rigby*. vol. 33, p. 198

6. In 1848 *A.*'s judgment was obtained and registered in *Yorkshire*. In 1850 *B.*'s judgment was obtained and registered both in *Yorkshire* and in the Common Pleas. After this *A.* for the first time registered his judgment in the Common Pleas. Held, that *A.*'s judgment had priority over *B.*'s as to lands in *Yorkshire*. *Neve* v. *Flood*. vol. 33, p. 666

7. The East Riding Registration Act (6 *Anne*, c. 35) is imperative, and unless a will of lands in that riding be registered within six months after the testator's death, or a memorial of the impediment which disables the devisee from doing so, registered in the manner pointed out by the 15th section, the will is void as against subsequent purchasers and mortgagees. *Chadwick* v. *Turner*. vol. 34, p. 637

8. A testatrix having lands in the *East Riding*, died in 1854. Her will was discovered in 1861, which devised these lands, but before any registration of it or of any "impediment" had been made, the heir mortgaged the property. Held, that the mortgagee had priority over the devisee. *Ibid.*

REHEARING.

[*See* APPEAL, DELAY.]

1. The costs of rehearing are not carried by the words "costs of suit as between solicitor and client," but they require to be specially mentioned in the order for taxation. *Semble*, the same rule applies to the costs of appeals and exceptions. *Agabeg* v. *Hartwell.* vol. 5, p. 271
2. Generally, the Court leaves the question of rehearing to the certificate of counsel, reserving, nevertheless, its power and jurisdiction, and if the order to rehear be obtained under such circumstances, or in such a manner, that any party has a right to complain, the proper proceeding is to apply to take the petition off the file. *Gwynne* v. *Edwards.* vol. 9, p. 22
3. Where a person, not a party to the suit, is desirous of obtaining a rehearing, he must apply for leave to present a petition to rehear. *Ibid.*
4. Where a decree has been affirmed by the Lord Chancellor, no application can be made except before the Lord Chancellor, for a rehearing, for the purpose of obtaining directions different from those already given. *Smith* v. *The Earl of Effingham.* vol. 10, p. 589
5. The time within which a decree or order of Chancery may be varied on rehearing has never been defined. The practice has been to allow a party to take his chance of success under a decree before the master, and, if unsuccessful, to obtain a rehearing of the decree. *Morgan* v. *Morgan.* vol. 14, vol. 72
6. A decree was allowed to be reheard twelve-and-a-half years after it had been pronounced, notwithstanding it had been acted upon during that period by sales, &c. *Ibid.*
7. A petition, presented in 1851, to rehear a cause disposed of in 1834—dismissed with costs. *Townley* v. *Bedwell.* vol. 15, p. 78
8. A young nobleman, on attaining twenty-one, for a small consideration, conveyed his reversion in real estates, and assigned policies which had been effected on his life in his name, for securing 20,000*l.*, with a proviso for redemption and reconveyance of the estates and policies on payment. After a delay of fourteen years the transaction was set aside, and in the meantime the policies had been sold under a power of sale. Held, that the mortgage must stand as a security for the moneys actually advanced, but not for the premiums which the mortgagee had paid for keeping up the policies. The bill had specifically asked for the reassignment of the policies, and the payment of the produce of those sold under the power of sale. The same relief was asked at the hearing, and was given by decree. After the decree had been passed, the Plaintiffs, finding the account in respect of receipts and payments of the policies would be onerous to them, obtained a rehearing, and then asked that this part of the decree might be omitted. The Court held them entitled, and rectified the decree accordingly, and without costs. *Pennell* v. *Millar.* vol. 23, p. 172

RELATIONS.

[*See* GIFT TO CLASS.]

1. Bequest to *A.* for life, and afterwards, in an event which happened, the testator directed advertisements to be made for his relations, to such only of whom as should claim within two months he left the property, to be divided according to the discretion of his executors. The executors died in *A.*'s lifetime. Held, that the next of kin of the testator, according to the statute, took equally, and that the class was to be ascertained at the death of *A.*, and not at the death of the testator. *Tiffin* v. *Longman.* vol. 15, p. 275
2. A testator gave real and personal estate to *A.* for life, and afterwards to his own relations, in such shares as *A.* should by will appoint. *A.* appointed it amongst the testator's relations "living at her death," and who were not the testator's next of kin at his death. Held, that the appointment was valid. *Finch* v. *Hollingsworth.* vol. 21, p. 112

RELEASE.

[*See* PLEA, SETTLED ACCOUNT, SURETY.]

1. A release, though unlimited in its terms, held, from the recitals and context, to operate only as to a particular sum mentioned in the recitals. *Lindo* v. *Lindo.* vol. 1, p. 496
2. An intestate at his death was indebted to *D. M.* in 1,687*l.*; disputes, however, arose between the administrator and next of kin as to the legality of the debt, and an agreement was come to between them and the brother of the intestate, whereby, reciting that all the property had been got in, and, excluding the disputed debt, amounted to 533*l.*; that doubts having arisen as to the validity of that debt, and that being desirous of maintaining the good fame and character of the deceased, the three parties had agreed to waive all questions as to the validity of the debt, and raise a fund to make good the deficiency; that the next of kin had agreed to "relinquish all claim to any residue or surplus;" that the intestate's brother should furnish 384*l.* towards payment of the debt, and the administrator should make good all the residue. It

was witnessed that the next of kin released to the administrator all his right, &c. to the personal estate of the intestate, as his next of kin or otherwise, the brother covenanted to pay his part, and the administrator covenanted to pay the residue out of his own money, and also to pay all other debts, &c. of the intestate. The debt was paid, and other funds afterwards fell in to the intestate's estate. Held, that the administrator was not, under the release, entitled thereto. *Lindo* v. *Lindo*. vol. 1, p. 496

3. Where a debtor delivers to his creditor his promissory note for the amount of the debt, the debt may be considered as actually paid, if the creditor, at the time of receiving the note, has agreed to take it in payment of the debt, and to take upon himself the risk of the note being paid; or if, from the conduct of the creditor, or the special circumstances of the case, such an agreement is legally to be implied; but in the absence of any special circumstances, the transaction does not amount to a discharge of the original debt, but a mere extended credit. *Sayer* v. *Wagstaff*. vol. 5, p. 415

4. An account was settled, and releases executed, between the residuary legatees of a partner and the representative of the surviving partner. Numerous and important errors in the account having been proved, the release was set aside, but having regard to the lapse of time, and the loss of books and documents, the Court declined opening the accounts altogether, but gave liberty only to surcharge and falsify. *Millar* v. *Craig*. vol. 6, p. 433

5. Where a release has been executed, and the parties have for a long space of time acquiesced in it, the mere proof of errors will not, in the absence of fraud, induce the Court either to set it aside or to give leave to surcharge and falsify; but the nature and amount of the errors alleged and proved may have a very considerable effect in the consideration of the question, whether the release was fairly obtained. *Ibid.*

6. A party who, upon a compromise, had executed a general release, claimed relief on the ground of a large item in which he was interested, having, by mistake, been omitted in the account. Held, that he was entitled to relief, but that to obtain it, the release must be wholly set aside. *Pritt* v. *Clay*. vol. 6, p. 503

7. *A. B.*, the representative of a deceased partner, having filed his bill against *C. D.*, the surviving partner, for an account, *A. B.*, in consideration of 500*l.*, released *C. D.* from all claims, and the bill was dismissed. By mutual error a debt of 2,000*l.* owing to the partnership, but which was not then known to exist, was omitted in the consideration by both parties; *C. D.* afterwards received it. Held, that *A. B.*, notwithstanding the release, was entitled to his share of the debt, but that to obtain it the whole account must be reopened. *Pritt* v. *Clay*. vol. 6, p. 503

8. Grantor of an annuity entrusted *Y.* with a sum of money for the purpose of redeeming it. *Y.*, without paying the money, obtained from the grantee a deed of release of the annuity. *Y.*, who acted in some respects as agent of both parties, afterwards died insolvent. Held, under the particular circumstances, that the loss must be borne by the grantor. *Vandaleur* v. *Blagrave*. vol. 6, p. 565

9. The Defendant granted to the Plaintiff an annuity, redeemable on six months' notice or on payment of a fine. In *May*, 1830, notice was given to repurchase in *November*, and in *August*, 1830, the Defendant entrusted *Yates* with the money for the repurchase. In *October*, *Yates* prevailed on the Plaintiff to execute the deed of re-assignment, indorsed on the annuity deed, which was dated in *November*, without receiving the repurchase-money; but the Plaintiff did not sign any receipt for the money. *Yates* afterwards produced the deed to the son of the Defendant, to satisfy him of the payment, and it was handed back to *Yates* to be kept by him, with the Defendant's other documents. *Yates* acted in the transaction as agent of both parties. He retained the money, and to deceive both parties, he continued the payment of the annuity, but afterwards died insolvent. The Defendant subsequently obtained possession of the deed. Held, under the circumstances, that the Defendant was not discharged, but was bound to pay to the Plaintiff the repurchase-money with interest from *November*, 1830, the Plaintiff accounting for the subsequent receipts of the annuity. *Ibid.*

10. A trustee, who was a solicitor, came to a final settlement of accounts with his *cestuis que trust*; and thereupon a general release was executed. In the accounts, the trustee had taken credit for bills of costs, for professional services, to which, under the general rule, he was not entitled. The *cestuis que trust* were assisted on the occasion by an independent solicitor, who perused the bills, and settled and attested the release. Held, under the circumstances, that the trustee was entitled to the benefit of the release. *Stanes* v. *Parker*. vol. 9, p. 385

11. On a settlement of account between a *cestui que trust* and trustee (a solicitor), the latter charged for professional services in the trust. A release was executed, but the *cestui que trust* not having had any independent professional assist-

ance on the occasion, the Court relieved him from the professional charges beyond costs out of pocket. *Todd* v. *Wilson.* vol. 9, p. 486

12. A banking firm, consisting of *A.*, *B.* and *C.*, were indebted to the Plaintiff. *A.* died. Held, that the estate of *A.* was not released from the Plaintiff's demand by his receipt of interest from the surviving and a new partner. *Harris* v. *Farwell.* vol. 13, p. 403

13. *A.* was co-partner with *B.*, *C.* and *D.* as banker, and was partner in another banking firm, with *B.* and *C.* *A.* died, and *E.* was admitted in the first bank alone. The two firms became bankrupt, and under an order of the Court the estates of the two firms were consolidated. The Plaintiff (a creditor of the first bank in *A.*'s life) received a dividend out of the consolidated estate. Held, that *A.*'s estate was not thereby released. *Ibid.*

14. The release by husband and wife of a sum of money secured by bond to *A.*, and payable to the wife after *A.*'s death, held not binding on the wife on her surviving both *A.* and her husband. *Rogers* v. *Acaster.* vol. 14, p. 445

15. When a *feme covert* is entitled to a reversionary interest in a *chose in action*, the release of the husband is as inoperative as his assignment, to bind his wife's right by survivorship. *Ibid.*

16. A contract to discharge a retiring partner from a debt due from the firm may be proved either by an express agreement, or by facts and conduct from which it may be fairly inferred. *Harris* v. *Farwell.* vol. 15, p. 31

17. The Court looks with considerable jealousy at a release executed by a young lady at or shortly after attaining twenty-one upon a settlement of accounts between her and her trustees. *Parker* v. *Blossm.* vol. 20, p. 295

18. The testator bequeathed 1,000*l.* to *A. B.*, who was indebted to him on bond. He gave instructions for a codicil, and in his own hand wrote his wish that *A. B.*'s legacy should be made up 8,000*l.*, specifying the bond as part of that sum. The codicil was never executed, and the document was not proved as testamentary. Held, that the bond debt was not released, and that *A. B.* took the legacy subject to the payment of the debt. *Chester* v. *Urwick.* vol. 23, p. 402

19. The estate of an intestate was divided between the persons claiming to be creditors *pari passu*, and they executed a release to the administratrix from all claims. A creditor executed the deed in respect of a particular debt, which was stated. He some time after made a further claim against the estate of the administratrix, who had charged it with the payment of the intestate's debts. Held, that it was barred by the release. *Bissett* v. *Burgess.* vol. 23, p. 278

20. Trustees, on receipt from other trustees of trust-moneys, are not bound to execute a release; all that can be required from them is a written acknowledgment of the receipt of the money. *In re Cater's Trusts.* (No. 2.) vol. 25, p. 366

21. A testator bequeathed two legacies of 2,000*l.* The executor rendered an account of the estate to *A. B.*, one of the legatees, shewing it to be about 1,750*l.* in the whole. The legatee, on receipt of half, executed a general release. Afterwards, it appeared that there was a further asset of 2,000*l.* belonging to the estate which had been omitted. Held, that the release was binding *pro tanto*, and the executor was ordered to pay to *A. B.* a moiety of the 2,000*l.* *Anonymous.* vol. 31, p. 310

22. *A. B.*, to whom his son-in-law had by deed mortgaged some property, declined to receive the interest, and afterwards, to induce his son-in-law to reside on the mortgaged property, *A. B.* had promised to allow him to live there rent free. The son-in-law acted on the promise until *A. B.*'s death. Held, that, in equity, no interest was payable until that time. *Yeomans* v. *Williams.* vol. 35, p. 131

REMAINDERMAN.

[*See* ACCELERATION, CROSS REMAINDER, LIFE TENANT AND REMAINDERMAN.]

1. The first legatee of a *quasi* estate tail in personalty takes the absolute interest, notwithstanding a manifest and avowed intention to give a succession of limited interests. *Byng* v. *Lord Strafford.* vol. 5, p. 558

2. There is no case in which the contingent estate of a remainderman has been accelerated, for the purpose of giving him a right to rent accrued prior to the time when his estate took effect. Where, therefore, an estate was limited to the children of *A.*, born within fifteen years, with remainder to the Plaintiff, and *A.* had no child, and the fifteen years had not expired, it was held, that the Plaintiff had no right to the present rents. *Sidney* v. *Wilmer.* vol. 25, p. 260

3. When the title of a remainderman is clear, the Court will, at his instance, compel the tenant for life to produce the title-deeds; but if his title be not clear, the Court will not incidentally decide in favour of the remainderman's title to the estate in a suit mereiy for the production of the title-deeds. *Davies* v. *Earl of Dysart* (20 *Beav.* 405) followed. *Pennell* v. *Earl of Dysart.* vol. 27, p. 542

REMOTENESS.

[*See* PERPETUITY.]

RENEWABLE LEASEHOLDS.

[*See* LANDLORD AND TENANT, LIFE TENANT AND REMAINDERMAN.]

1. Where the tenant for life of leaseholds in settlement, being under no obligation to renew, obtains an extension of the term, he is a trustee for those claiming under the settlement; and the fact of the settlement containing a special provision that a particular renewal shall enure to the benefit of the trust, does not prevent the application of this general rule. *Tanner* v. *Elworthy.* vol. 4, p. 487
2. Leaseholds for lives being devised in trust for parties in succession, with a direction to renew out of the rents or by mortgage. The Court sanctioned a reference to the Master to inquire whether it would be for the benefit of all parties that the future fines for renewal should be provided by an insurance on the lives of the *cestuique vies*. *Greenwood* v. *Evans.* vol. 4, p. 44
3. Difficulties in arranging the proportions of the fines which the parties in succession ought to bear in such cases. *Ibid.*
4. A testator gave his widow "the full and entire enjoyment" of his real and personal estates, which, after her death, he gave to other persons; and he empowered her to retain a portion of a sum of 150*l.* a year given to other parties, for renewing the leaseholds. Held, she was entitled to enjoy the leasehold *in specie*, that it was not imperative on her to renew, but that she had acted wrong in surrendering a lease, of which she was the only *cestui que vie*, as she thereby deprived herself of the option of renewing for the benefit of the parties in remainder. *Harvey* v. *Harvey.* vol. 5, p. 134
5. *A.* granted a lease and covenanted that he would always, at any time when requested by the lessees, &c., demise the premises for the further term of thirty-one years, in which new lease were to be contained the same rents, covenants, articles, clauses, provisoes, and agreements. Held, that this amounted to a covenant for perpetual renewal. *The Copper Mining Company* v. *Beach.* vol. 13, p. 478
6. Form of lease to be granted by trustees, under a covenant by a testator for perpetual renewal. *Hodges* v. *Blagrave.* vol. 18, p. 404
7. Under such a covenant, trustees are not bound to enter into a covenant to renew, but the original covenant, together with the decision of the Court of the lessee's right to a perpetual renewal, should be recited in the lease granted by the trustees, and the trustees should purport to demise in obedience thereto. *Hodges* v. *Blagrave.* vol. 18, p. 404
8. The 95th section of the Municipal Corporation Act (*5 & 6 Will.* 4, c. 76), which enables municipal corporations to renew leases on a fine, in cases where sanctioned "by ancient usage or by custom or practice," at "a fine certain," or where they "have ordinarily made renewal," upon "an arbitrary fine," is to be construed liberally. *Attorney-General* v. *The Corporation of Great Yarmouth.* vol. 21, p. 625
9. The word "renewal," in the Municipal Corporation Act, does not mean a mere custom to let on lease at different rents; and though the renewals need not be on precisely the same terms, there must be such an uniformity as to shew that the same lease has been renewed. *Ibid.*
10. Leases were granted by a municipal corporation of the same property in 1778, 1798 and 1824, to the same lessee and his assigns for twenty-one years, at a rent of *5s.* In the two last instances alone a fine of *7s. 6d.* was taken. The covenants varied, and there was an interval of six years between the second and third, during which there was a yearly tenancy. Held, that the case did not come within the 95th section of the Municipal Corporation Act, and a renewal could not be granted at an under value and on a fine. *Ibid.*
11. By a settlement the trustees were to use their utmost endeavours to renew an ecclesiastical lease upon reasonable terms, and to raise the fines out of the rents or by mortgage. A renewal became impracticable. Held, that the fund reserved by the trustees out of rents for the purpose of renewal belonged absolutely to the tenant for life. *Morres* v. *Hodges.* vol. 27, p. 625
12. The renewal of an ecclesiastical lease having become impracticable, the tenant for life held entitled to the whole rents. *Richardson* v. *Moore*; *Tardiff* v. *Robinson.* vol. 27, p. 629
13. Under a trust to renew leaseholds out of the rents or by mortgage thereof: Held, that the fines for renewal must be borne by the successive tenants for life, &c. of the estate, in proportion to their actual enjoyment of the property. *Ainslie* v. *Harcourt.* vol. 28, p. 313
14. Under a trust to renew leaseholds by sale or by mortgage of an independent estate: Held, that the fines must be raised by sale or mortgage of that estate, and that the successive tenants for life were only bound to keep down the interest on the mortgage. *Ibid.*
15. Under a trust to renew leases "out of the rents, issues, and profits," followed by a power in case, from any cause, the money wanted to pay the fines should not

be produced by the ways and means aforesaid, to mortgage: Held, the rents being sufficient for that purpose, that the fines ought to be paid out of income. *Solley* v. *Wood*. vol. 29, p. 482

16. A trustee whose duty it was to renew leaseholds out of the rents, applied them to his own use. Held, that the tenant for life, and not those in remainder, must bear the loss. *Ibid.*

17. A leasehold for three lives was settled in the usual way, but there was no trust to renew. After two of the lives had dropped, the trustees renewed the lease by adding two new lives, and the tenant for life voluntarily advanced a portion of the fine. Held, that he was not entitled to repayment out of the other trust funds until the extent of his enjoyment could be ascertained. But the tenant for life having died in the life of the remaining *cestui que vie*, Held, that his estate was then entitled to be repaid out of the trust funds. *Harris* v. *Harris*. (No. 3.) vol. 32, p. 333

18. *A.* agreed to let some premises to *B.* for three years, and, at the expiration of that term, to grant him a lease for an extended term. *A.* died, and three years having expired, *B.* continued to hold on under *A.*'s executors four years without asking for a lease. He then required a lease. Held, that *B.*'s option had not determined, and that he was entitled to the extension of the term. *Moss* v. *Barton*. vol. 35, p. 197

19. Premises were demised for three lives and for twenty-one years after the death of the last survivor. The lessor covenanted with the lessee that if he should "lose a life, and think proper to have a new life put in, then, within six months after the death of the first life, and so on continuing the term and estate thereby demised," the lessor "would put in a new life." Held, that the lessee had power to introduce one new life only, and that one in the place of the first life dropping, but with a new term of twenty-one years, commencing with the death of the survivor of the two survivors and the new life. *Walmesley* v. *Pilkington*. vol. 35, p. 362

RENT.

[*See* LANDLORD AND TENANT.]

Interest on arrears of rent and an apportionment, as between landlord and tenant, disallowed. *Peers* v. *Sneyd*. vol. 17, p. 151

RENT-CHARGE.

1. King *Charles* the second, by letters patent, granted some property in fee, subject to a fee-farm rent, and to a proviso of re-entry, in case a decree should be made at the suit of the king for repairing the property, and the same should afterwards remain for a year out of repair. The Crown afterwards granted away the rent. Held, that the proviso for re-entry could not be exercised, and that it therefore formed no objection to the title to the property. *Flower* v. *Hartopp*. vol. 6, p 476

2. A rent-charge was secured on a house, with power, when in arrear, to enter and receive the rents until all arrears and all costs, charges and expenses occasioned by nonpayment should be satisfied. The rent-charge being in arrear, the grantee entered, and the house being greatly dilapidated and untenanted, he repaired and let it. Held, that the question, whether the grantee of a rent-charge entitled to be allowed moneys expended by him in repairing the property, was one to be determined at law, and that if he was not entitled thereto at law neither was he in equity. *Hooper* v. *Cooke*. vol. 20, p. 639

3. Bequest of an annuity or rent-charge to *A.* for life, and after her decease unto her children equally, to be applied in their maintenance until the youngest attained twenty-one, and then to be sold and the produce divided amongst them. Real estates were then devised to *B.* charged with the annuity. Held, that that the rent-charge was perpetual and not for life. *Mansergh* v. *Campbell*. vol. 25, p. 544

4. A sale of lands decreed to raise arrears of a rent-charge granted with powers of distress and entry, there being nothing to distrain on, and there being twenty other concurrent rent-charges with like remedies. *White on behalf of, &c.* v. *James*. (No. 2.) vol. 26, p. 191

REPLICATION.

1. A cause stood over with liberty to amend by adding parties. The Plaintiffs took out administration to those parties, and stated so by amendment. The Defendants, by their answer, then objected, that the amendments had been improperly made. The Plaintiffs afterwards filed a second replication. Held, that the Defendants were not entitled to have the second replication taken off the file, unless they waived their objection to the amendments. *James* v. *James*. vol. 4, p. 578

2. An appearance had been entered for an absconding Defendant. Liberty was given to advertise in the Gazette the notice of having filed the replication. *Lechmere* v. *Clamp*. vol. 29, p. 259

REPRESENTATIVES.

In a bequest "to brothers and sisters, or their representatives in equal shares:" Held, that representatives meant executors or administrators, and not the next of kin. *Chapman* v. *Chapman.* vol. 33, p. 556 (*Re Henderson.* vol. 28, p. 656)

REPUGNANT CONDITION.

[*See* CONDITION, FORFEITURE ON BANKRUPTCY.]

1. An absolute vested bequest was accompanied with a direction, that it should not be delivered till the legatee attained twenty-five. Held, that he was entitled to payment on attaining twenty-one. *Rocke* v. *Rocke.* vol. 9, p. 66
2. A testator declared, that if any dispute should arise between his devisees or legatees in anywise relating to his "estate or effects," or any claim therein contained, it should be referred to arbitration. And he declared that, in case his devisee or legatee should commence any proceedings at law or in equity "touching or concerning or relating to the matters and things aforesaid," the devise to him should be void. Held, that the "matters and things" referred to were the "estate and effects," &c., and that the condition of forfeiture was void, as it would prevent the devisee taking any legal proceedings necessary for the protection of his rights. *Rhodes* v. *The Muswell Hill Land Company.* vol. 29, p. 560
3. Devise in fee, with an earnest hope and request that the devisee would not sell, alien or dispose of the estate, except by way of exchange or for re-investing in other estates. Held, that the restriction was repugnant and void. *Wood* v. *Oglander.* vol. 34, p. 513
4. Devise of real and personal estate to *A.* absolutely, with a proviso that *A.*'s interest should cease if *B.* or his wife, or their children should become entitled to any part of the estate by gift, sale, &c. from *A.* Held, that the clause of forfeiture was void. *Ludlow* v. *Bunbury.* vol. 35, p. 36

REPUTED OWNERSHIP.

[*See* BANKRUPT TRUSTEE.]

1. An order, giving costs to the Defendant, and liberty to amend to the Plaintiff, though bespoken and paid for by the Defendant, may nevertheless be obtained by the Plaintiff. *Henley* v. *Stone.* vol. 4, p. 386
2. Proper form of order on obtaining further time to answer, on condition of a Serjeant-at-Arms, under the 21st Order (1833). *Henley* v. *Stone.* vol. 4, p. 392
3. *A.* (a retiring partner) agreed to assign a policy (part of the partnership assets) to *B.* (the continuing partner) on certain terms. *B.* mortgaged it to *C.*, who gave notice to the office. *B.* afterwards became bankrupt. Held, that the policy was not within the order and disposition of *B.* either as against *A.* or *C.* *In re Langmead's Trusts.* vol. 20, p. 20
4. A trustee, with the consent of his *cestui que trust*, pledged *Madras* government notes held by him in trust for the benefit of a firm of which he was partner. The notes were afterwards redeemed and delivered to the firm. Subsequently the firm, without the consent of the *cestui que trust*, pledged them for a similar purpose. The firm being insolvent, and bankruptcy imminent, the trustee redeemed the notes with partnership assets, indorsed them to himself personally, and replaced them in his private chest. The firm became bankrupt. Held, first, that the notes were not in the order and disposition of the firm; and secondly, that there was no fraudulent preference. *Sinclair* v. *Wilson.* vol. 20, p. 324
5. Traders mortgaged a leasehold factory to *A.*, and they afterwards mortgaged the machinery in it, separately, to *B.* Upon the bankruptcy of the traders, who had been allowed to retain possession of the machinery. Held, that the moveable machinery passed to the assignees, as being within the order and disposition of the bankrupt, but that the machinery fixed to the freehold did not, though mortgaged separately. *Whitmore* v. *Empson.* vol. 23, p. 313
6. The Plaintiffs' solicitor made an equitable assignment of the costs, to which he would become entitled in the suit, to a stranger to the cause. An order was afterwards made for taxation of the Plaintiffs' costs, and for their payment to the solicitor out of a fund in Court. The solicitor became bankrupt before the creditor had obtained any stop order or given notice of the assignment. Held, that costs were within the order and disposition of the bankrupt, and passed to his assignees. *Day* v. *Day.* vol. 23, p. 391
7. A Scotch firm had a branch in *London*, which was wholly conducted by an agent and manager at a salary, but in their name. By contract, he was to have a lien on goods consigned to him for bills accepted by him for the firm. The firm became bankrupt in *Scotland.* Held, that the goods under the manager's control at the time were within the "order and disposition" of the bankrupts, and passed to their assignees unaffected by his lien. *Hoggard* v. *Mackenzie.* vol. 25, p. 493

8. A shipbuilder sold a ship which he was building, and agreed to complete it. It remained in his possession down to his bankruptcy. Held, that it was not within his order and disposition. *Holderness* v. *Rankin.* vol. 28, p. 180

RESCINDING CONTRACT.

[*See* ABANDONMENT OF CONTRACT, TIME OF ESSENCE.]

1. *A.* and *B.* agreed to divide property in a particular manner, *A.* sued for a partition and *B.* was held under the circumstances to have abandoned the agreement, and a partition was decreed. *Morris* v. *Timmins.* vol. 1, p. 411

2. The vendor, notwithstanding a condition that he might rescind, was held bound to comply with a requisition that a mortgagee of the property, by underlease should be paid off and concur in the conveyance. *Greaves* v. *Wilson.* vol. 5, p. 290 (See *Page* v. *Adam.* vol. 4, p. 269)

3. After decree against a purchaser for specific performance, the Defendant made default in payment of the purchase-money. Held, that the vendor was entitled to rescind the contract. *Foligno* v. *Martin.* vol. 16, p. 586

4. Unless a valid acceptance be given, within a reasonable time, to a written offer to sell an estate, it will be treated as abandoned. *Williams* v. *Williams.* vol. 17, p. 213

5. Where there is an undue delay on the part of the vendor in making out his title, the purchaser, on reasonable notice, may put an end to the contract. *Nott* v. *Riccard.* vol. 22, p. 307

6. *A.* on the 4th of *October*, contracted to grant a mining lease to *B.* and no time was mentioned for completion. On the 10th of *December*, *B.* gave notice to *A.* that unless he completed the contract within a month, he would rescind the contract. Held, on *A.*'s default, that *B.* was justified in giving the notice, that the time was reasonable, and a bill by *A.* for specific performance was dismissed with costs, although there were matters essential for the completion, which did not depend on *A.* but on third parties. *Macbryde* v *Weekes.* vol. 22, p. 533

7. By the 8th condition of sale, a vendor reserved a right to rescind, in case of objection to title, &c., and by the 11th, misdescriptions were not to annul the sale, but be the subject of compensation. *Semble*, that the 8th condition did not apply to cases of misdescription within the 11th condition. *Hayford* v. *Criddle.* vol. 22, p. 477

8. On the sale of a copyhold manor, it was stated, that the "fine was two years' improved value." The 8th condition enabled the vendor, in case of any objection to title, to rescind, and the 11th condition provided for compensation in case of mistake or error. The abstract was delivered, and no objection to the title was taken within the time prescribed for that purpose. Subsequently, some doubt arose as to whether the fine was of one or two years' improved value. Held, that, so far, the Plaintiff was entitled to specific performance with a compensation; but the purchaser having afterwards raised a question as to title, and filed a bill for specific performance, the vendor, on the same day, gave notice to rescind. Held, that although the objection as to title was waived at the bar, the vendor had a right to insist on the contract having been rescinded, and the bill was dismissed. *Hoy* v. *Smythies.* vol. 22, p. 510

9. In *March*, 1850, the Defendant agreed to grant the Plaintiff a lease of a coal mine. Three months after, the Defendant gave notice to the Plaintiff that, unless he commenced working in a month, he should consider the agreement abandoned. Two years after, the Plaintiff entered and commenced working, but was resisted by the Defendant; the working however proceeded, but was abandoned in *February*, 1853. Five years afterwards the Plaintiff attempted to resume the work, and filed a bill for specific performance. It was dismissed with costs on the ground of delay. *Sharp* v. *Wright.* vol. 28, p. 150

10. Conditions of sale provided, that if the purchaser should insist on any requisitions, which the vendor might be unable or unwilling to remove or comply with, the vendor might, if he should think fit, annul the sale. The purchaser, having made some requisitions, the vendor, without answering any, rescinded the contract. Held, that he ought to have answered them, and having done so after a suit by the purchaser for specific performance, and the Plaintiff having accepted the title, a decree was made against the vendor for specific performance, with costs. *Turpin* v. *Chambers.* vol. 29, p. 104

11. Upon the sale of some leaseholds, it was stipulated, "that if, from any cause or circumstance whatever, the purchase should not be completed" on a day named, the vendor should "be at liberty to annul the contract." The purchaser refused to pay the purchase-money on the day named, the only remaining requisitions then being as to the registration of a deed, and the sufficiency of a stamp, which the vendor undertook to supply. The purchaser, on the same day, annulled the contract. Held, that he was

justified in so doing. *Hudson* v. *Temple.* vol. 29, p. 536

12. When a requisition is made by a purchaser, the vendor must be allowed a reasonable time to comply with it. Thus, a requisition was made at the end of *June*, which involved the necessity of instituting a suit and obtaining a decree. On the 1st of *August*, the vendors consented to comply with the requisition, and they obtained a decree in *Michaelmas* term following; but on the 9th of *August* the purchaser gave notice to rescind the contract. Held, that it was ineffectual. *Micholls* v. *Corbett.* vol. 34, p. 376

13. A decree for specific performance was made against a purchaser. Not having paid the purchase-money, he was ordered, on motion, to pay it within a limited time, and in default, that the contract should be rescinded and all proceedings stayed. He was also ordered to pay the costs of the motion. *Simpson* v. *Terry.* vol. 34, p. 423

14. Where a person sells property which he is neither able to convey nor to enforce a conveyance from other proper parties, the purchaser may repudiate the contract, and is not bound to wait to see if the vendor can induce some third person to join in making a good title. *Forrer* v. *Nash.* vol. 35, p. 167

15. A decree for specific performance was made against a purchaser in possession, but he was unable to complete the purchase. The Court rescinded the contract and ordered the purchaser to pay to the vendor the rents received by him, together with the costs of suit and those occasioned by the non-completion of the purchase. *Clark* v. *Wallis.* vol. 35, p. 460

RESERVED BIDDING.

Trustees for sale are justified in fixing a reserved bidding on a sale by auction. *Re Peyton's Settlement.* vol. 30, p. 252

RESIDUARY GIFT.

1. A testator bequeathed to *A.* his household furniture and other like things, "and all other goods of whatever kind," and he appointed that certain specific moneys should be divided as follows, after all his debts should be paid off. He then specified certain legacies, and proceeded, "three or four thousand pounds, or whatever remaining sum or sums, to *A.*" Held, that *A.* did not take the general residue. *Wrench* v. *Jutting.* vol. 3, p. 521

2. A testator bequeathed to his wife the interest of his money and the use of his goods for life; at her death he gave certain legacies and the remainder of his property to his brothers and sisters. Held, that the widow was entitled to the residue for life. *Glendening* v. *Glendening.* vol. 9, p. 324

3. A testator bequeathed an annuity to *D.*, and to *A.*, *B.* and *C.* his residue, to be equally divided, &c.; except the *Swansea* canal shares, which were not to be sold till after the death of *D.* Held, that the *Swansea* canal shares passed by the residuary gift. *James* v. *Irving*; *James* v. *Gronow.* vol. 10, p. 276

4. A testator having a power of appointment by will over a sum of stock, bequeathed two sums of 5,000*l.* and 500*l.* sterling thereout to *A.* and *B.*, and the residue to his son. The stock became in equity liable to his debts, and by payment thereof and of the costs of the suit, the fund became less than 5,500*l.* sterling. Held, that the pecuniary and residuary legatees were not liable to abate proportionably, but that the residuary gift failed altogether *Petre* v. *Petre.* vol. 14, p. 197

5. A testator gave his freehold estate "and property, whether real or personal," to *A.* for life, and after her decease he gave "all his said freehold estate and property" to *B.* and wife for life; and after their decease, he gave "all his said freehold property" to their children, "for an estate of inheritance in fee simple," and in default, he gave "his freehold estate and property" to *C.*, "his heirs and assigns, in fee simple." He charged his personal estate with some legacies, and he gave the residue of which he should die possessed, &c. to *A.* Held, that *B.* and his children took no interest in the personal estate which belonged to *A.* *Hollingsworth* v. *Shakeshaft.* vol. 14, p. 492

6. A testator bequeathed to his mother "all and every thing he died possessed of, namely, money, plate, books," and other enumerated articles for her sole use. "And lest there be any dispute, he declared again, that he left her every thing he died possessed of, for her sole use, as stated above." Held, that the whole residue passed, and that the bequest was not restricted to the enumerated articles and others, *ejusdem generis.* *In re Kendall's Trust.* vol. 14, p. 608

7. A testator gave the residue of his property, whether freehold or personal, and wheresoever situate, to *A. B.* Held, that *copyholds* passed. *Reeves* v. *Baker.* vol. 18, p. 372 (See *Quennell* v. *Turner.* vol. 13, p. 240)

8. A testatrix proceeded thus:—"And in respect of my real and personal estate I direct the tenant to be continued, and as to the rest, residue and remainder of my estate, including moneys and secu-

rities for money, I direct that it shall be divided," &c. Held, that the real estate passed. *Meeds* v. *Wood*. vol. 19, p. 251

9. A testator gave his real and personal estate to trustees, upon trust to pay the income to four persons for life as tenants in common, and after the death of the survivor to sell the real estate, and stand possessed of the proceeds and of the stocks, funds and securities upon which his personal estate should then be invested, upon certain trusts for a class of children. By the death of one of the four his portion of the income became released, and was accumulated until the death of the survivor of the four. Held, that the accumulation of the real estate was undisposed of, and passed to the heir, but that the accumulation of the personalty passed as residue to the children. *In re Drakeley's Estate*. vol. 19, p. 395

10. A testator devised an estate, *E.*, to *A. B.* absolutely, and "all her freeholds, &c. not hereinbefore devised" to *A. B.* for life, with remainders over. *A.* B. died in the testatrix's life. Held, that the estate, *E.*, passed under the residuary devise. *Green* v. *Dunn*. vol. 20, p. 6

11. A testatrix having two leaseholds, at *X.* and *Y.*, bequeathed those at *X.* to one for life, and directed, that after her decease, they should "form the residue of her leasehold estates thereinafter bequeathed." She then bequeathed all the residue of her leaseholds, "whatsoever and wheresoever," not thereinbefore otherwise disposed of. Held, that the leaseholds at *Y.* also passed under the residuary gift. *Markham* v. *Ivatt*. vol. 20, p. 579

12. Where, in a residuary gift, specific property is bequeathed, the bequest may nevertheless be specific as to that particular property, though general as to the rest. *Mills* v. *Brown*. vol. 21, p. 1

13. A testator bequeathed his Consols to *A.*, and directed his executors to sell all such parts of his estate and effects as should not consist of ready money or money in the funds, and "to stand possessed of the moneys to arise thereby, with such ready money and the money he might have in the Long Annuities, upon trust" for *A.*, *B.* and *C.* Held, that the Long Annuities were specifically bequeathed, and not liable to contribute towards the payment of general legacies. *Ibid.*

14. A *feme coverte* had power, by will, to appoint a trust fund, of which 2,000*l.* was payable immediately, and the remainder subject to her husband's life interest therein. She appointed the 2,000*l.*, and directed the trustees, after the decease of the husband, to stand possessed of the "residue" of the stock, after payment thereout of the 2,000*l.*, upon trust to pay 5,700*l.*, as the husband should appoint, and to apply the residue in payment of a number of legacies. The husband appointed the 5,700*l.* to himself. Held, notwithstanding there was a probability that the fund would prove insufficient for the payment of all the legacies, that he was entitled to immediate payment of the 5,700*l.* The "residue" applicable to the payment of the legacies (other than the 5,700*l.*) being held to mean simply what remained after payment of the 5,700*l.*, and not a proportionate share of the fund. *Ibid.*

15. In a will, the words "I constitute *A.* and *B.* my residuary legatees will not pass real estate." *Windus* v. *Windus*. vol. 21, p. 373

16. A testator gave several pecuniary legacies, including one to his son *A.*, and devised his freehold, copyhold and leasehold estates to his sons *B.* and *C.* as tenants in common, and appointed them his executors. *B.* died, and by a codicil the testator appointed *A.* executor in the room of *B.*, and revoked the legacies given to *A.* and *C.*, and appointed them "residuary legatees," and, under a power, appointed freehold and leasehold property, comprised in his marriage settlement, to "the residuary legatees his sons *A.* and *C.*" Held, that the moiety of the freehold estates devised to *B.* had lapsed, and descended on the testator's heir (*C.*), and that *C.* took the other moiety under the unrevoked devise in the will. *Ibid.*

17. Distinction between a general and a particular residue. *De Trafford* v. *Tempest*. vol. 21, p. 564

18. A testator bequeathed particular chattels at his residence to *A.*, and his chattels there "not thereinbefore otherwise disposed of" to *B.*, and his general residue to *C.* The gift to *A.* lapsed by her death in the testator's lifetime. Held, that the chattels bequeathed to *A.* passed to *B.*, as part of a particular residue, and not to *C.*, as part of the general residue. *Ibid.*

19. Bequest of specific chattels in trust to sell, "in the first place," to pay the debts, and then to divide the residue amongst five persons. There was no residuary gift. Held, that the debts were primarily payable out of the general residue. *Newbegin* v. *Bell*. vol. 23, p. 386

20. After gifts to *A.*, *B.* and *C.*, there was a gift, "after their decease," of that property, together with the residue. Held, that "after their decease" meant "subject to the interests of *A.*, *B.* and *C.*," and that these words did not postpone the immediate enjoyment of the general residue. *Lill* v. *Lill*. vol. 23, p. 446

21. *N.* devised an estate to *R.* to such of the children of *J.* as *J.* should by will

appoint, and in default to them equally. By the death of four of *J.*'s children, *J.* took half the estate as heir of his deceased children. *J.*, by his will, devised all his real estate to his children equally, and he directed that the estate at *R.*, devised by the will of *N.*, over which he might have any power of appointment by will, should not be included or affected by his own will, but should go according to the limitation contained in *N.*'s will. Held, that *J*'s moiety in the *R.* estate passed under the residuary devise in his will, and did not descend to his heir. *Atherton* v. *Langford.* vol. 25, p. 5

22. A testatrix, after reciting that she was entitled to a legacy of 1,000*l.* under her husband's will, gave the 1,000*l.*, as to 100*l.*, part thereof, to *A.*, as to 400*l.*, part thereof, to *B.*, and as to all the residue of the said legacy of 1,000*l.* and all the residue of her estate, to *C.* At the death of the testatrix, 216*l.* only were due on the legacy. Held, that *A.*, *B.* and *C.* must abate in proportion. *Wright* v. *Weston.* vol. 26, p. 429

23. A testatrix, who was entitled to half of her sister's residuary estate, bequeathed a large legacy, which, if it should fail, she directed should fall "into her own estate." She bequeathed the residue of her property (except that derived from her sister) to *A.*, and the residue of her property derived from her sister's estate to *B.* Held, that the latter must contribute with the former towards payment of the debts, expenses and legacies. *Greenwood* v. *Jemmett.* vol. 26, p. 479

24. "Residue" is not a "legacy" in the ordinary sense of the term, though the person taking it is a "residuary legatee." *Ward* v. *Grey.* vol. 26, p. 485

25. The 1 *Will.* 4, c. 40 (as to the right of executors to the undisposed-of residue), merely shifts the burden of proof from the next of kin to the executor. *Read* v. *Stedman.* vol. 26, p. 495

26. Devise and bequest of residue of testator's property to *A.*, *B.* and *C.* "upon trust" to convert and pay debts and certain legacies. The testator, in a subsequent clause, appointed *A.*, *B.* and *C.* his executors, and he died without next of kin. Held, that the Crown, as against the executors, was entitled to the undisposed-of residue. *Ibid.*

27. The testator gave all his real and personal estate to trustees, upon trust, except as to money due to him from *A. E.*, to convert by sale and invest in the funds, "and pay the interest thereof unto his wife" for life, with remainder over. Held, that the widow was entitled to the interest arising from the debt from *A. E.* *Dobson* v. *Banks.* vol. 32, p. 259

28. In residuary gifts the decisions shew a strong inclination of the Court, in all cases where it is possible, to make the gift vested. *Pearman* v. *Pearman.* vol. 33, p. 394

29. A bequest to "pay and divide" to children, "as and when" they attain a certain age, is ambiguous, and these words are not to be treated as equivalent to a gift to such of the children as should attain that age. *Ibid.*

30. *A. B.* (a married woman) died in 1858, having bequeathed "her moneys and securities for money" to one, and all "her separate personal estate and effects not thereinbefore disposed of" to another. In 1863 *A. B.*'s mother died, having bequeathed to her a legacy and half her residue, and which bequest was saved from lapse by the Wills Act (1 *Vict.* c. 26, s. 33). Held, that this legacy passed under the residuary, and not under the specific, bequest in *A. B.*'s will. *Re Mason's Will.* vol. 34, p. 494

RESTRAINT OF TRADE.

1. An agreement by a solicitor, for valuable consideration, not to practise as solicitor in any part of *Great Britain* for twenty years, held valid. *Whittaker* v. *Howe.* vol. 3, p. 383

2. Injunction granted to restrain a solicitor, who had sold his business on those terms, from practising in any part of *Great Britain*, and from endeavouring to induce any persons who were clients of the former and present firm, to cease to employ the latter as their attorneys or solicitors. *Ibid.*

3. Covenants in restraint of trade in a trading locality are not considered usual covenants. *Wilbraham* v. *Livesey.* vol. 18, p. 206

4. The servant of a milkman, in *C.* street, *London*, agreed not to carry on the like business within three miles therefrom. Held, that this was not an undue restraint of trade, and the servant was restrained, by injunction, from violating his agreement. *Benwell* v. *Inns.* vol. 24, p. 307

5. A covenant not to carry on the trade of horse-hair manufacturer within 200 miles of *Birmingham*, held valid. *Harms* v. *Parsons.* vol. 32, p. 328

6. A covenant, on the purchase of the business of horse-hair manufacturers, not to carry on the trade of horse-hair manufacturer, construed to prevent the covenantor from the buying and selling manufactured horse-hair. *Ibid.*

7. *A.*, a trader, became bankrupt, whereupon *B.* agreed to purchase the business from the assignees, and to enter into partnership with *A.*'s son, if *A.* would enter into a bond not to carry on the same business within twenty miles. *A.*

gave the bond. Held, that there was a sufficient consideration for the bond to entitle *B.* to an injunction to restrain *A.* from carrying on the business within the limits prescribed. *Clarkson* v. *Edge.* vol. 33, p. 227

RESULTING TRUST.

[*See* LAPSE.]

There is a resulting trust in the grantor where lands are conveyed on charitable trusts to be afterwards declared, and no subsequent declaration is made. *Attorney-General* v. *Dean and Canons of Windsor.* vol. 24, p. 679

RETAINER.

[*See* RETAINER OF COUNSEL OR SOLICITOR, RETAINER OF DEBT, SOLICITOR AND CLIENT.]

RETAINER OF COUNSEL OR SOLICITOR.

1. The retainer of a solicitor need not be in writing, but if he neglects taking that precaution, and his retainer being afterwards questioned, there is nothing but assertion against assertion, he must bear the costs of the risk he thus undertakes. *Wiggins* v. *Peppin.* vol. 2, p. 403
2. Whether the retainer of counsel in a cause ceases upon his being appointed Queen's Counsel, *quære.* *Lucas* v. *Peacock.* vol. 8, p. 1

RETAINER OF DEBT.

The same individual was the administrator both of *A.* and *B.*, whose estates were being administered by the Court. *A.*'s estate was found indebted to *B.*'s. Held, that the administrator was entitled, and was bound, at the instance of the parties interested in *B.*'s estate, to retain the debt out of *A.*'s assets in preference to *A.*'s other creditors. *Fox* v. *Garrett*; *Miles* v. *Fox.* vol. 28, p. 16

REVERSIONARY INTEREST.

[*See* CATCHING BARGAINS, WIFE'S REVERSIONARY INTEREST.]

A legacy was bequeathed payable as soon as legal proceedings connected with the fund out of which it was to be paid should be terminated. Held, that this was neither a reversionary interest nor a contingent legacy. *Luff* v. *Lord.* vol. 34, p. 220

REVIVOR.

[*See* ABATEMENT, PARTIES (REPRESENTATIVE).]

1. One decree was taken in several suits. An abatement afterwards occurred. Held, that one bill of revivor was sufficient. *Moore* v. *Elkington.* vol. 2, p. 574
2. A bill was, at the hearing, held defective for want of parties, and stood over. Another bill was filed, stating that at the hearing, the sole Plaintiff was dead, and stating circumstances intended to remove the objection for want of parties, and praying the discharge of the former order, and a revivor. A demurrer for want of parties was sustained. *Egremont* v. *Cowell.* vol. 5, p. 620
3. A cause came on in 1839, and was ordered to stand over for want of parties. A bill of revivor and supplement was afterwards filed, stating that *A.* the sole Plaintiff, had died in 1838, insisting that the order of 1839 was a nullity, and praying a revivor. A common *ex parte* order to revive was obtained on petition, placing the cause "in the same plight and condition as at the death of *A.*" The Defendant moved to discharge the order on the ground that the order of 1839 must be discharged before the cause could be put in the same plight as at the alleged death of *A.* Held, however, that it was regular. *Egremont* v. *Cowell.* vol. 6, p. 408
4. A suit was instituted by the creditors and official assignee of a bankrupt. The creditors' assignee died before decree, the official assignee died after decree, and a new official assignee being appointed, his name was, on motion, substituted under the old Bankruptcy Act (6 *Geo.* 4, c. 16, s. 67), as Plaintiff in the suit. *Mas* v. *Ricketts.* vol. 7, p. 484
5. A bill of revivor and supplement held to be within the 23rd and 24th Orders of *August*, 1841 (Ord. x. 11), as to service on formal parties. *Walcot* v. *Walcot.* vol. 10, p. 20
6. A suit was revived after decree by the representatives of a Defendant. Held, that all the other Defendants to the original bill were necessary parties. *Buchanan* v. *Malins.* vol. 11, p. 52 (*Jones* v. *Powell.* vol. 11, p. 398)
7. A bill was filed by a lunatic, and his committee, and an injunction granted, and a decree made directing an issue. The lunatic died, and no further proceedings had been taken by the committee. The Court ordered, that the injunction should be dissolved and all proceedings stayed, unless the suit should be revived within a limited time. *Price* v. *Berrington.* vol. 11, p. 90
8. A suit abated by the marriage of one of three female Plaintiffs, and a bill of revivor was filed by the other Co-Plaintiffs

against her and her husband only. Held, that to such a bill, all accounting parties ought to be made Defendants, but that under the circumstances the objection had been waived. *Jones* v. *Powell.* vol. 11, p. 398

9. When a Defendant dies, his executors cannot compel the Plaintiff to revive, or, in default, have the bill dismissed. *Reeves* v. *Baker.* vol. 13, p. 115

10. Where a Plaintiff at his option may either file his bill against *A.* and *B.*, or against *A.* alone, and he takes the former course, and *B.* afterwards dies, he cannot, at the hearing, by waiving relief against *B.*'s estate, proceed against *A.* alone, in the absence of *B.*'s representatives. *The London Gas-light Company* v. *Spottiswoode.* vol. 14, p. 264

11. An order of revivor and supplement may be made as of course under the 15 & 16 *Vict.* c. 86, s. 52, with the addition, "that the personal representatives may admit assets in chambers or account." *Edwards* v. *Batley.* vol. 19, p. 457

12. Pending an account directed by the decree the accounting party died. An order was made, on motion to revive, against his executor, and that he might either admit assets or account for his testator's estate. *Cartwright* v. *Shepheard.* vol. 20, p. 122

13. A bill prayed a revivor, and liberty to prosecute the original suit, for payment and additional relief. A general demurrer was allowed, on the ground that the relief thus prayed could only be obtained by original bill. *Staehle* v. *Winter.* vol. 20, p. 550

14. A decree was made in the absence of an infant who was interested; nothing having as yet been done under it, and it appearing to be for her benefit, the Court made a supplemental order, under the 15 & 16 *Vict.* c. 86, s. 52, to carry on the decree. *Jebb* v. *Tugwell.* vol. 20, p. 461

15. A Defendant, having been served with subpœna, died before appearance. Held, that the suit could not be revived against his heir, but that the remedy against him, if any, was by original bill. *Bland* v. *Davison.* vol. 21, p. 312

16. The right to revive an administration suit after decree is not barred by lapse of time, but the Court exercises a discretion, and in cases of gross negligence or laches may refuse to allow the suit to be revived. *Alsop* v. *Bell.* vol. 24, p. 451

17. An estate, on which there were two equitable mortgages, was ordered to be sold, and the produce divided according to their priorities, which, however, were not declared by the decree. Afterwards, the second mortgagee instituted a second suit, claiming priority over the first, upon a title paramount to that of the mortgagor, which was discovered in the first suit. Held, that a bill of revivor was unnecessary, and relief was given in the second suit. *Langstaff* v. *Nicholson.* vol. 25, p. 160

18. Property was settled by *A.* with power for him to revoke the settlement by deed. *A.* by a deed, which did not profess to execute the power, conveyed the property to his nephews beneficially. Held, that the deed operated as a revocation. *Cowlishaw* v. *Hardy.* vol. 25, p. 169

19. *A.* settled mortgages on himself for life, with remainder to *B.*, with a power of revocation by deed. *A.* transferred the mortgages to his nephew *C.* by deed, expressed to be made in consideration of the mortgage money. *C.* never paid the consideration, but alleged that *A.* intended a gift to him. Held, that there was revocation, and that either the mortgage or the consideration money was subject to the settlement. *Ibid.*

20. A sole Plaintiff became bankrupt. Held, that his assignees might proceed in the suit by an order under the 32nd section of the 15 & 16 *Vict.* c. 86. *Jackson* v. *The Riga, &c. Railway Company.* vol. 28, p. 75

21. A Defendant, in an administration suit, died abroad after decree, and his executors declined proving his will in this country. The Court appointed a representative under the 15 & 16 *Vict.* c. 86, and then revived the suit against him. *Bliss* v. *Putnam.* (No. 2.) vol. 29, p. 20

22. A solicitor having died pending an order for taxation: Held, that the proceedings might be revived by the client against the solicitor's representatives by an *ex parte* order. *Re Nicholson.* vol. 29, p. 665

23. Pending a taxation, the solicitor died. Held, that his executors might revive the proceeding against their client by an *ex parte* order. *Re Waugh.* vol. 29, p. 666

24. After a decree in a suit instituted by one of several tenants for life against the trustees, the sole Plaintiff died. Held, by the Master of the Rolls, that the suit could not be revived by an order of course by another tenant for life, but it afterwards appearing that the applicant had been served with the decree and obtained liberty to intervene, the Lords Justices made the order. *Dobson* v. *Faithwaite.* vol. 30, p. 228

25. A Plaintiff obtained an order of course to revive a suit, upon a petition, stating an order as having been made in the suit, but which in fact had only been made in another suit; it was discharged with costs for the irregularity. *Brignall* v. *Whitehead.* vol. 30, p. 229

26. After decree, a Defendant cannot revive, unless with the consent of Plaintiff or on notice to him, and his neglect to do so. *Noble* v. *Stowe.* (No. 2.) vol. 30, p. 512

27. After decree, the Plaintiff's interest was, under the decree, transferred to trustees. Held, that an order of revivor and supplement obtained by a Defendant, with the consent of the Plaintiff, was not irregular. *Noble* v. *Stow.* (No. 2.) vol. 30, p. 512

28. A sole Plaintiff died having devised the estate, which was the subject of the suit. Held, that the devisee was not entitled to the common order to revive under the 15 & 16 *Vict.* c. 86, s. 52. *Laurie* v. *Crush.* vol. 32, p. 117

29. In a suit relating to real estate the sole Plaintiff died before decree, having devised the estate. Held, that the devisee might be brought before the Court by the common order, under the 15 & 16 *Vict.* c. 86, s. 52, and that a supplemental bill was unnecessary. *Laurie* v. *Crush* (32 *Beav.* 117) *overruled. Eyre* v. *Brett.* vol. 34, p. 441

30. An order to revive, under the 15 & 16 *Vict.* c. 86, s. 52, made in order to bring before the Court the devisee of a Defendant who had died before decree. *Earl Durham* v. *Legard.* vol. 34, p. 442

31. A sole Plaintiff having died after decree, an order to revive against his devisee was made, under the 15 & 16 *Vict.* c. 86, s. 52. *Bedford* v. *Bedford.* vol. 35, p. 342

32. A Defendant having died before answer, an order to revive and also to answer was made against his personal representative under 15 & 16 *Vict.* c. 86, s. 52. *Trench* v *Semple.* vol. 35, p. 376

33. An order to revive, under the 15 & 16 *Vict.* c. 86, s. 52, cannot be obtained against executors who have not proved the will, though it is alleged they have acted. *Joyce* v. *Rawlins.* vol. 35, p. 465

34. After decree, a suit became defective by the transfer of the Plaintiff's interest. The Plaintiff and his transferees having, after notice, neglected to revive, an order was made, on the application of the Defendants, for an order to revive, and that they might carry on the suit. *Overman* v. *Overman.* vol. 35, p. 477

REVOCATION.

[*See* POWER (REVOCATION), WILL (REVOCATION).]

RIGHT OF WAY.

1. Where one grants to another a right of way, the latter must bear the expense of making it available, by forming the road, keeping it in repair and erecting the necessary fences: *Semble. Ingram* v. *Morecraft.* vol. 33, p. 49

2. A dedication to a parish of a right of way cannot be presumed; a dedication can only be presumed, from uninterrupted use, in favour of the public generally, and not in favour of a portion of the public, as of the inhabitants of a parish. *The Vestry of the Parish of Bermondsey* v. *Brown.* vol. 35, p. 226

3. A vestry was empowered by act of parliament, to indict any person who should stop or impede rights of way in the parish, and to take such other proceedings for opening thereof as should appear expedient. Held, that the vestry must indict in the name of the Queen, and sue in equity in the name of the Attorney-General, and that they could not proceed in their own name. *Ibid.*

SALE.

[*See* MORTGAGE (SALE BY COURT), PARTITION, POWER TO SELL OR MORTGAGE, PURCHASE IN LOTS, RESERVED BIDDING, SALE BY COURT, VENDOR AND PURCHASER.]

The 55th section of the statute 15 & 16 *Vict.* c. 86, is applicable only to cases in which, for the protection of property or other like cause, it is necessary to apply to the Court for a sale, and it was not intended to enable parties, in a contested suit, to obtain, upon an interlocutory application before the hearing, a decision upon the questions in contest. *Prince* v. *Cooper.* vol. 16, p. 546

SALE BY AUCTION.

A life interest in property was sold by auction "without reserve." The vendors had entered into an agreement with *M.*, that he should bid 32,000*l.*, and be the purchaser, unless a higher sum should be bid, and this fact was concealed. The property was sold to the Defendant for 50,000*l.* The tenant for life afterwards died. Held, that the proceedings were tainted, and that specific performance could not be decreed. *Robinson* v. *Wall.* vol. 10, p. 61

SALE BY COURT.

[*See* MORTGAGE (SALE BY COURT).]

1. It is irregular to confirm the Master's report, approving of a contract for sale of an estate being carried into effect, by a petition of course with the consent of the clerks in court of all parties. Such a report ought to be confirmed by a special petition, stating all the facts. *Bailey* v. *Todd.* vol. 1, p. 95

2. A resale of property, sold under a decree, ordered, in case the purchaser did not pay his money into court within a given time; and the purchaser ordered, in that case, to make good the deficiency and to pay the costs of all proceedings. *Gray* v. *Gray.* vol. 1, p. 199

3. Where property is sold under a decree, and there is jurisdiction to sell, mere ir-

regularities and errors in the proceedings will not invalidate the sale, or prevent a good title from being made under the decree. *Calvert* v. *Godfrey*. vol. 6, p. 97

4. A trader who had a freehold, copyhold, and personal estate, died in *September*, 1832, leaving an infant heir. His estate was insufficient to pay his debts and charges. His partners, however, by deed, took upon themselves to pay all the debts, and secured the principal part of his property for his family. A suit was instituted for carrying the deed into execution, and the Master found that it would be for the benefit of the infant heir, that the real estate should be sold and applied in the manner mentioned in the deed. A decree was made for sale, and the infant was declared a trustee within the 1 *Will.* 4, c. 60. Held, that the Court had no jurisdiction to order the sale; and that the infant was not a trustee within the act, and the purchaser was discharged with costs. *Ibid.*

5. An estate was sold to a party to a suit for payment of the testator's debts, and which, by the disclaimer of a trustee, was vested in the heir *pur auter vie*, with legal remainder to the children of *A.* (who was living) as tenants in common. The purchase-money was in Court. The case appeared not to be within the 1 *Will.* 4, c. 47, so that no effective conveyance could be made until the death of *A.* Held, that the purchase-money ought not to be distributed. *Heming* v. *Archer*. vol. 9, p. 366

6. Upon a sale under the Court, an order upon the purchaser to pay his purchase-money into Court cannot be obtained, until the title has been accepted, or the Master's report obtained in its favour; and such an order, obtained before such acceptance or report, upon affidavit of service of the notice of motion, was discharged with costs. *Rutter* v. *Marriott*. vol. 10, p. 33

7. Where a purchaser under the Court obtains the order *nisi* to confirm the report, but neglects to make it absolute, the Plaintiff may do so by motion of course. *Robertson* v. *Skelton*. vol. 10, p. 197

8. A purchaser under a decree is not to be relieved from his purchase, merely because there are irregularities in the decree, where there is no want of jurisdiction or parties. *Baker* v. *Sowter*. vol. 10, p. 343

9. Real estate was devised to and vested in trustees, in trust for certain persons, amongst whom were an infant and persons not *in esse*. In a suit for carrying the trusts into execution, the debts and legacies were paid out of the personal estate, before any provision was made for payment of the costs of suit. While there was personal estate remaining, and before the facts had been so ascertained as to make a sale of the real estate proper, a decree was made for the sale of the real estate, for payment of the costs. Held, that although the decree was not such as would have been pronounced, on due consideration, and would have been varied upon a rehearing, yet a purchaser under it was not entitled to be discharged from his purchase on the ground of irregularity, there being no want of jurisdiction or parties. *Baker* v. *Sowter*. vol. 10, p. 343

10. An order to pay purchase-money into Court without prejudice to the title refused, though consented to by all parties, there being no specialty in the case. *Ouseley* v. *Anstruther*. vol. 11, p. 399

11. A purchaser under the Court of a reversionary interest having made default in completing, a resale was ordered, and the purchaser was to make good any deficiency. Before such resale, it was discovered that the reversionary interest had previously fallen into possession: the Court gave the purchaser four days to complete his purchase. *Robertson* v. *Skelton*. vol. 13, p. 91

12. Costs to which a purchaser under the Court is entitled, on its being found that a good title cannot be made. *Perkins* v. *Ede*. vol. 16, p. 263

13. A judgment creditor ranking after a first mortgagee, but prior in date to a further charge, and to other judgments, held entitled to a foreclosure, although all the other parties insisted on a sale. *Messer* v. *Boyle*. vol. 21, p. 559

14. On a sale under the Court, two persons agreed not to bid against each other, but that one should bid up to 1,500*l.* and divide the lot between them. They bought it for 650*l.* Held, that this agreement furnished no ground for opening the biddings or annulling the sale. *In re Carew's Estate*. vol. 26, p. 187

15. Property ordered by the Court to be sold by auction was bought in. After which, and before the auctioneer had left the rostrum, *A. B.* signed a contract to purchase it at the reserved price, which was divulged contrary to the expressed instructions given to the auctioneer. Held, that there was a valid binding contract. *Else* v. *Barnard*. vol. 28, p. 228

16. Suits were compromised with the sanction of the Court (infants being interested), and it was agreed that the estate should be sold by auction, for the purpose of division, and that *A. B.* should have the conduct of the sale. At the auction, the property could not be sold, and it was afterwards sold by private contract at the reserved bidding. Held, that this was a valid sale, and the purchaser was decreed specifically to perform his contract. *Bousfield* v. *Hodges*. vol. 33, p. 90

17. Where, upon a sale under the Court, the title turned out bad. Held, that the purchaser, on being discharged, was not entitled to his costs as against a Defendant to whom the conduct of the sale had been committed by the Court. But his rights, as against any fund which might come into Court, were reserved. *Mullins* v. *Hussey*. vol. 35, p. 301

SATISFACTION.

[*See* ADEMPTION, LEGACY TO DEBTOR.]

1. Annuities of 90*l.* and 50*l.* respectively, bequeathed by a testator to his two sisters, held not to be a satisfaction of annuities of 30*l.* each granted in his lifetime, by him to them for valuable consideration. *Hales* v. *Darel*. vol. 3, p. 324
2. By a marriage settlement, a rent-charge of 20*l.* a year was secured to the wife for life, payable quarterly, with powers of distress, &c. To enable the husband to mortgage, the wife released her rent-charge to the mortgagee. The equity of redemption was reserved to the husband, who covenanted to convey other lands on the trusts of the settlement. The husband, by his will, gave his real and personal estate to his brother, on condition that he would allow his wife 30*l.* a year for life. Held, that the 20*l.* a year remained a valid charge on the equity of redemption; and, secondly, that it was not satisfied by the 30*l.* a year. *Wood* v. *Wood*. vol. 7, p. 183
3. A father, on the marriage of his daughter *A.*, gave her husband 1,500*l.*, for her present portion or fortune, and he covenanted, that, in case he should give his other daughter *B.*, on her marriage or otherwise, a greater portion or fortune than 1,500*l.* in money or value, his executors would, within a year after the death of himself and wife, pay or deliver to the husband of *A.* such further or other sum or property, as would be equal with the portion or fortune given to *B.* The father, on the marriage of *B.*, gave her a portion of 1,500*l.*, and by his will, after charging his real estate with the payment of his debts, gave *B.* his furniture and a life interest for her separate use in some freehold and leasehold property. Held, that the life interest was within the covenant, but the furniture not; and, secondly, that a debt of this nature was charged on the real estate. *Eardley* v. *Owen*. vol. 10, p. 572
4. A father voluntarily granted a rent-charge of 100*l.* to his second son for life, which was secured on estate *X.*, and also by his covenant. By his will he devised his real estates upon trust to pay him an annuity of 50*l.* Held, under the circumstances, that the latter was not a satisfaction of the former. *Lethbridge* v. *Thurlow*. vol. 15, p. 334
5. The presumption is against double portions, and the burden of proof lies on those who contend for two portions, to shew that this presumption is rebutted. *Montague* v. *Montague*. vol. 15, p. 565
6. In 1842 a parent, having a power to appoint two separate sums of 5,000*l.* and 10,000*l.* amongst his children, made his will, by which he appointed the 5,000*l.* to *James*, and the 10,000*l.* between *Theodosia* and *Catherine*. In 1844 he by deed appointed the 5,000*l.*, which he had before appointed by will to *James*, to *Theodosia*. In 1846 he, by codicil, confirmed his will, and he died in 1847. *Theodosia* claimed the two sums of 5,000*l.*, but *James* contended, first, that she was bound, by election, to give effect to the bequest of 5,000*l.* to him, or to relinquish the 5,000*l.* given her by the will; and secondly, that the appointment of 1844 was a satisfaction of the legacy of 5,000*l.* Held, that no case of election had arisen, but that the legacy to *Theodosia* was satisfied, and the amount unappointed. *Ibid.*
7. An estate was limited to trustees for a term, with remainders to *A.*, and afterwards to his sons in tail, with similar limitations, successively, to *B.* and *C.*, and their sons in tail. The trusts of the term were, on the death of *A.*, and of *B.* and of *C.* respectively, to raise portions for their respective younger children. Held, on the death of *C.*, in the life of *B.*, that the portions for the younger children of *C.* could not be raised during the life of *B.* *Lawton* v. *Swetenham*. vol. 18, p. 98
8. "After payment of his debts" the testator gave certain legacies, one of 150*l.* to *E. B.*, and he directed his executors to pay "my bequests only to the individuals herein named." The testator owed *E. B.* 150*l.* Held, that the legacy was not a satisfaction of the debt, but that *E. B.* was entitled to both. *Jefferies* v. *Michell*. vol. 20, p. 15
9. In 1838 *A. B.* executed a voluntary deed, securing, out of his estate, life annuities to seven persons, payable on his decease. In 1851 he executed another voluntary deed, covenanting to pay annuities very dissimilar in their nature to five of the same persons. Held, that the latter were not substitutional for the former. *Palmer* v. *Newell*. vol. 20, p. 32
10. *A. B.* settled property upon himself for life, with remainder to his children, with power, at his request, to advance any part thereof in his lifetime. Some advances were made expressly under the power, besides which, on the marriage of two of his daughters, *A. B.* advanced to them certain sums out of his own moneys, but there was no evidence of intention to

purchase their shares. Held, that the latter advances were not to be treated as a satisfaction, *pro tanto*, of the daughters' shares under the settlement. *Samuel* v. *Ward*. vol. 22, p. 347

11. Satisfaction can only arise where the person who makes the payment is himself the party bound to pay, or is the owner of the estate charged with the payment. *Ibid.*

12. The testator, on his marriage, covenanted that his representatives should, within three months after his decease, pay 2,000*l.* to trustees, to be held for his wife for life. By his will, after directing all his debts to be paid, he gave his widow an annuity of 200*l.* a year, payable quarterly, and other benefits. Held, that the provision for the wife under the settlement was not satisfied by the provision made for her by the will. *Cole* v. *Willard*. vol. 25, p. 568

13. A testator directed his trustees to make a settlement of his real estate, containing a power to the tenant for life to charge the estate with a sum for portions for his younger children. Held, that in determining the rights of the younger children, the portions could not be treated as legacies under the will, but that such rights must depend on the terms of the instrument executing the power. *Remnant* v. *Hood*. vol. 27, p. 74

14. An estate was charged with portions for younger children, "to be raised and levied" after the decease of the tenant for life, "and to be forthwith paid and payable." Held, that a younger child who attained twenty-one, but died in the life of the tenant for life, took a vested interest. *Ibid.*

15. Sums advanced by a testator to his children on their marriage, and to establish them in business. Held, a satisfaction *pro tanto* of their shares of the residue bequeathed to them by his will; but *secus* as to small gifts made, from time to time, by the testator to such children. *Schofield* v. *Heap*. vol. 27, p. 93

16. A gift of a share of a residue to a child: Held, *pro tanto*, satisfied by a provision made by the testator on her marriage after the date of the will. *Beckton* v. *Barton*. vol. 27, p. 99

17. A sum of 200*l.* was charged on a brother's estate in favour of his sister. By his will, he devised the estate in trust to raise 950*l.* for his sister, owing (as he expressed himself) to her by him. Held, that the 200*l.* was thereby satisfied. *Shadbolt* v. *Vanderplank*. vol. 29, p. 405

18. A testator, on the marriage of his daughter, gave the husband 1,000*l.* jocularly in exchange for his snuff-box. By his will the testator gave each of his daughters 1,000*l.*, but provided that in case any daughter should have received from him any sum advanced "by way of marriage portion or advancement," it should be deducted from the legacy. Held, under the circumstances, that the 1,000*l.* given to the husband of the daughter was not to be deducted. *M'Clure* v. *Evans*. vol. 29, p. 422

19. A testator being, by virtue of his marriage settlement, under an obligation to pay the trustees 5,000*l.*, in trust for his wife for life, by his will bequeathed 10,000*l.* to other trustees for his wife for life; and he also directed the payment of all his just debts. Held, that the bequest was not a satisfaction of the 5,000*l.*, and that the widow was entitled to both provisions. *Pinchin* v. *Sims*. vol. 30, p. 119

20. A testator, on the marriage of his son, covenanted to pay an annuity of 100*l.* a year to his daughter-in-law, if she survived his son, *durante viduitate*. By his will, the testator bequeathed to her an annuity of the same amount, but which differed in several respects, and he directed the payment of all his debts. Held, that the latter annuity was not a satisfaction of the former. *Charlton* v. *West*. vol. 30, p. 124

21. *A. B.*, having a power under his marriage settlement to appoint a fund amongst his children, and which was limited to them in default of appointment, became a party to his son's marriage settlement, by which he covenanted with the trustees to bequeath by will to his son or daughter-in-law 2,500*l.* upon the trusts of the settlement. By his will, *A. B.* appointed to his son 2,500*l.* (part of the trust funds) in full discharge of his covenant. Held, that the bequest was not a performance of *A. B.*'s covenant, and that the parties claiming under the son's settlement were entitled to both. *Graham* v. *Wickham*. (No. 1.) vol. 31, p. 447

22. A legacy by a debtor to a creditor held to be a *pro tanto* discharge of the debt, it appearing that the testatrix had made a proposal to that effect to her creditor, and that he had not objected to the arrangement. *Hammond* v. *Smith*. vol. 33, p. 452

23. A legacy by a parent or a person *in loco parentis* to a child is not satisfied by occasional small gifts in the testator's life. Thus a legacy of 2,500*l.* was held satisfied *pro tanto* by a gift of 1,000*l.* Stock on marriage, but not by gifts of 80*l.* and 100*l.*, or by an annual allowance of 60*l.* a year. *Watson* v. *Watson*. vol. 33, p. 574

24. In order to create a case of satisfaction of a legacy given by a person *in loco parentis*, that relation must exist at the date of the will. *Ibid.*

25. A legacy being held *pro tanto* satisfied by a gift of stock: Held, that its value must be ascertained as at the time of the gift. *Watson* v. *Watson.* vol. 33, p, 574
26. The testator, by his marriage settlement, covenanted to secure his wife a life annuity of 100*l.* a year if she survived him. By his will, he gave her a life annuity of 100*l.* a year. The Court held that this was in addition, and not in satisfaction, on three grounds—first, because the testator directed his debts to be paid; secondly, because he expressed it to be given "as an addition to her own property;" and thirdly, because he gave it "in full satisfaction of her dower, freebench and thirds upon his property." *Glover* v. *Hartcup.* vol. 34, p. 74
27. A debt held not satisfied *pro tanto* by a legacy of a less amount bequeathed by the debtor to the creditor. *Gee* v. *Liddell.* (No. 1.) vol. 35, p. 621

SCANDAL.

[*See* IMPERTINENCE.]

1. A stranger to a cause cannot, as of course, except to and refer a pleading alleged to be scandalous as to him, and impertinent as between the parties, but he may be authorized so to do upon making a special application to the Court. *Williams* v. *Douglas.* vol. 5, p. 82
2. Reference for scandal and impertinence, on the joint petition of Plaintiff and of his solicitor, the pleading being scandalous as to the latter. *Bishop* v. *Willis.* vol. 5, p. 83, n.
3. Solicitor having inserted scandalous matter in an answer, and put counsel's name thereto without authority, committed and ordered to pay costs. *Bishop* v. *Willis.* vol. 5, p. 83
4. A bill containing reflections on a party, ordered, by consent, to be taken off the file. *Clifton* v. *Bentall.* vol. 9, p. 105
5. Where the allowance of exceptions for scandal and impertinence is confirmed by the Court, upon appeal from the Master, a special order to expunge is necessary. *Joddrell* v. *Joddrell.* vol. 12, p. 216
6. A trustee called on the Defendant to set forth whether, for the reasons in the bill stated, or some other and what reasons, he was not unable to execute the trusts, "or how otherwise." The Defendant, in his answer, imputed to the Plaintiff's solicitor needless delay in effecting a proposed compromise, his inducement being to favour another solicitor, his personal friend. Held, that the statement was not scandalous. *Reeves* v. *Baker.* vol. 13, p. 436
7. A Defendant took exceptions to an injunction bill for scandal and impertinence, but he neglected to set them down. Held, that the Plaintiff was entitled to an order of course for setting them down, and they were afterwards advanced for hearing. *Coyle* v. *Alleyne.* vol. 14, p. 171
8. Upon a bill by a daughter to set aside a mortgage executed by her for her father: Held, that statement of facts tending to shew the object of the loan to the father was to enable the mortgagee to effect her seduction were not scandalous. *B—.* v. *W—.* vol. 31, p. 342
9. This Court visits very severely a Plaintiff who makes a charge of fraud against a Defendant, which he is unable to sustain by evidence. The rule is more stringent where the introduction of the charge is made for the purpose of giving the Court jurisdiction. *Straker* v. *Ewing.* vol. 34, p. 147

SCALE OF COSTS.

1. A Defendant having, *pendente lite*, offered to pay all that was ultimately found due from him, the Plaintiff was ordered to pay all the subsequent costs of suit. *Remnant* v. *Hood.* vol. 27, p. 74
2. The sum of 800*l.* only was recovered in a suit: Held, nevertheless, that the costs were not taxable upon the lower scale, the object of the suit not being limited to the recovery of that sum. *Grimes* v. *Harrison.* (No. 2.) vol. 27, p. 198
3. An estate amounted to 1,323*l.*, but was reduced to 863*l.* before the commencement of the suit. Held, that the lower scale of costs was applicable. *Judd* v. *Plum.* vol. 29, p. 21

SCHOOL.

[*See* CHARITY, PATRONAGE.]

1. The Court being of opinion that Lord *Eldon* on a previous occasion had considered that exhibitions belonging to a free school might be given to scholars not on the foundation, declined interfering so as to give the free scholars a priority over those who were not "foundationers." *In re The Rugby School.* vol. 1, p. 457
2. The school was designated by the founder as a grammar school, but the boys were to be taught writing and arithmetic in all its branches. Held, that those who were qualified in other respects ought not to be admitted if they could read English, and were capable of being taught the first elements of grammar. *Ibid.*
3. The entrance of boys under twelve years of age in a free school having been dis-

couraged, held, on petition under 52 *Geo.* 3, c. 101, that such a course of proceeding was prejudicial to the objects of the charity, and ought to be corrected. *In re The Rugby School.* vol. 1, p. 457

4. The trustees of a free grammar-school, whose origin did not appear, held property "to the use of the school." Having elected a schoolmaster, they obliged him to enter into a bond and agreement stipulating that he should not have or claim a freehold in the school or estates, and should quit at six months' notice, and should not intermeddle with the estates, with certain other stipulations as to the government and management of the school. Held, that the trustees had exceeded their powers. *In re The Royston Free Grammar-School.* vol. 2, p. 228

5. Injunction granted to restrain trustees of a grammar school removing the master. *Willis* v. *Childe.* vol. 13, p. 117

6. The revenues of a charity grammar-school having increased tenfold, the Court, on a vacancy, restrained the appointment of a new master until something had been settled as to a new scheme. *The Attorney-General* v. *The Warden, &c. of the Louth Free School.* vol. 14, p. 201

7. Subsequently, liberty was given to appoint a new master, he taking his office subject to any future alterations to be directed by the Court. *Ibid.*

8. An academy for the education of English Presbyterians was established at *Warrington*, and was governed by a body of trustees, who afterwards deemed it expedient to remove it to *Manchester*, thence to *York*, and back again to *Manchester*. There was no trust deed or document declaring the original objects of the charity, but it was stated in a resolution of the trustees to be for the benefit of that part of the kingdom which was totally deficient in academies. The trustees having presented a petition asking to have the academy removed to *London*: Held, that the trustees had power so to remove it; that the object of the charity was to afford education to students for the ministry and others; and that its locality was a secondary consideration, and looked upon only as a means to an end. *In re Manchester New College.* vol. 16, p. 610

9. In a school the first object is to provide a proper remuneration for a competent master, and this ought not to be interfered with by the institution of exhibitions and scholarships, however useful in themselves. *Attorney-General* v. *Archbishop of York.* vol. 17, p. 495

10. As to the admission of dissenters to the free grammar-schools of King *Edward* the Sixth. *Attorney-General* v. *Sherborne Grammar-School.* vol. 18, p. 256

11. A free grammar-school was founded and endowed by King *Edward* the Sixth, by letters patent (1550), for the education, teaching and instruction of boys and young men in grammar. The direction and management was thereby committed to the governors, who were empowered, with the advice of the bishop of the diocese, to make statutes and ordinances for that purpose. Held, that this was a Church of *England* school properly so called. *Attorney-General* v. *Sherborne Grammar-School.* vol. 18, p. 256

12. A testator, in 1614, founded a preachership, a school and almshouses, but neither by the will nor by the royal charter of foundation, was any provision made as to the religious instruction of the scholars, but the latter empowered the governors to make such reasonable statutes for the "good rule and governance" of the school as they should think proper, so as not to be repugnant to the laws of the realm. Statutes were accordingly made requiring the scholars to attend church and receive religious instruction. Held, that this was not a Church of *England* school; and it was ordered, in a proposed new scheme, that children, whose parents objected, should neither be compelled to attend church, nor to receive religious instruction. *Attorney-General* v. *Haberdashers' Company.* vol. 19, p. 385

13. The governing body of a grammar school founded by *Edward* the Fourth was empowered, with the advice of the bishop of the diocese, to make statutes and ordinances. Held, that this was a Church of *England* school, and that the trustees must be of that persuasion; but the Court, on directing a scheme, refused to give any special directions as to religious instruction, further than that it was to be in accordance with the statutes and ordinances made, from time to time, by the trustees and the bishop. *In re The Stafford Charities.* vol. 25, p. 28

14. A testator bequeathed a sum to Sir *E. A.* upon trust to lay it out in lands, for the endowment of a school; and he appointed that Sir *E.* and his heirs "should be feoffees in trust and patrons and protectors of the said school for the electing a fit and sufficient schoolmaster." Held, that the right of patronage was alienable. *The Attorney-General* v. *Boucherett.* vol. 25, p. 116

15. The advantages and objections to allowing the masters of free grammar-schools to take boarders considered. *In the Matter of the Bristol Free Grammar-School.* vol. 28, p. 161

16. In considering the question as to the propriety of introduction of boarders into free grammar-schools, each case must be tried on its own merits. *Ibid.*

17. The Court, in 1860, refused to alter a scheme made in 1847, prohibiting the masters of the *Bristol* Free Grammar-School taking boarders, the school being very prosperous, and there appearing no necessity for admitting them. *In the Matter of the Bristol Free Grammar-School.* vol. 28, p. 161

18. In those grammar schools which are, from their position and neighbourhood, well attended by free scholars, boarders should not be admitted, unless to such a limited extent as not to interfere with the general character of the school; and when the school has attained a great amount of success under this system, it would be foreign to the duty or province of this Court to interfere with or alter the system. *Ibid.*

19. The Court, under the circumstances, refused to sanction the introduction of a clause into a scheme, authorizing the master of a grammar school to take boarders. *The Attorney-General* v. *The Corporation of Gloucester.* vol. 28, p. 438

20. Authority given by the Court to apply to Parliament to authorize a scheme admitting the children of dissenters to the benefit of a Church of *England* school; and upon application to Parliament, such authority was granted. *The Attorney-General* v. *The Market-Bosworth School.* vol. 35, p. 305

SCIRE FACIAS.

1. The writ of *scire facias* to repeal a patent does not issue, nor is the flat for that purpose granted by the Attorney-General as of course: *Semble.* *The Queen* v. *Prosser.* vol. 11, p. 306

2. Application for liberty to sue on a bond, given to the Clerk of the Petty Bag for securing costs to the Defendant in *scire facias* to repeal a patent. *The Queen* v. *Mill.* vol. 14, p. 312

SCRIP SHARES.

[*See* SHAREHOLDER.]

"SECURITY."

[*See* DESCRIPTION OF GIFT.]

1. Canal shares will not pass under a bequest of property vested in "bonds or securities." *Hudleston* v. *Gouldsbury.* vol. 10, p. 547

2. The words "stock in the foreign funds" held upon the terms of a will, to comprise all foreign securities, for which the faith of the government of the foreign country was pledged. *Ellis* v. *Eden.* vol. 23, p. 543

SECURITY FOR COSTS.

[*See* NEXT FRIEND.]

1. Where a client, resident abroad, applies for the taxation of his solicitor's bill of costs, on his undertaking to pay, he must give security for the costs of the proceeding. *In re Pasmore.* vol. 1, p. 94

2. A Plaintiff being ordered to pay costs went abroad (as was sworn upon belief and not denied) permanently and to avoid payment, he was ordered to give security for costs, and the proceedings in the suit were in the mean time stayed. *Busk* v. *Beetham.* vol. 2, p. 537

3. Plaintiffs ordered to give security for the costs, allowed to deposit money instead of giving such security, and a reference made to the Master to approve of a proper sum. *Fellowes* v. *Deere.* vol. 3, p. 353

4. Leave was given to the Plaintiff in equity to bring an action at law. After the action had been commenced the Plaintiff died; his heir revived the suit, and obtained leave, on a motion which was unopposed, to continue the action. The Defendant applied to this Court that the new Plaintiff might give security for the costs of the action. The Court considered that it had no jurisdiction so to order, but it suspended the prosecution of the action until security had been given. *Hilton* v. *Lord Granville.* vol. 5, p. 263

5. Liberty given to sue on a bond given to the late Six Clerks, as a security for costs upon a proper indemnity. *Robinson* v. *Bruton.* vol. 6, p. 147

6. In a Vice-Chancellor's cause, the Plaintiffs described themselves as resident abroad. The Defendants obtained *ex parte* at the Rolls an order for security for costs. An application to the Master of the Rolls to discharge it, on the ground that the Defendants had in their hands funds belonging to the Plaintiffs sufficient to indemnify them, was refused, because there was no irregularity in the order, and the cause being attached to the Vice-Chancellor's Court, the Master of the Rolls could not enter into the merits. *Hooper* v. *Paver.* vol. 6, p. 173

7. Pending the suit, the infant Plaintiffs and their next friend went abroad, and upon a subsequent amendment the fact was not noticed. A motion for security for costs was refused, there being no wilful intention to mislead, the residence abroad not being permanent, and no danger of losing the costs being suggested. *Kerr* v. *Gillespie.* vol. 7, p. 269

8. A Plaintiff having been ordered to give security for costs, gave an insufficient security; he was ordered to give other security within a month, and having made default, he was ordered to give security within a limited period, and, in default,

that the bill should stand dismissed with costs. *Giddings* v. *Giddings*.
vol. 10, p. 29

9. A Plaintiff by his bill described himself as resident within the jurisdiction. The Defendant had some notice of his being resident abroad. The Defendant answered, and on a subsequent amendment a demurrer was allowed, with liberty to amend. The Plaintiff having amended and described himself as resident abroad, the Defendant obtained an order of course for security for costs. Held, under these circumstances, 1st, that such an order might be obtained as of course, though after answer; 2ndly, that it was not necessary in the petition for the order to state that an answer had been filed; and 3rdly, that though the Defendant might have precluded himself from asking for security for costs in the suit as it stood before the last amendment, still he was not so precluded after the Plaintiff, by amendment, stated himself to be resident abroad. *Wyllie* v. *Ellice*. vol. 11, p. 99

10. Where a petitioner is out of the jurisdiction, he may deposit a sum in lieu of giving security for costs, but the undertaking of his solicitor is insufficient. *In re Norman*. vol. 11, p. 401

11. A petitioner having, on his petition, given a false address, and having neither explained it nor given a true address, was ordered to give security for costs, though he was not contemplating going out of the jurisdiction. *Ex parte Foley; In re Smith*. vol. 11, p. 456

12. A Plaintiff who gave up his house in *England*, and resided abroad, as he stated, "for a temporary abode," but who left it ambiguous whether and when he intended to return, ordered to find security for costs. *Kennaway* v. *Tripp*.
vol. 11, p. 588

13. A Plaintiff described himself as living abroad. Having given notice of a motion, the Defendant appeared and asked for time to answer the affidavits, and he afterwards filed affidavits in opposition. Held, that he had not thereby waived his right to security for costs. *Murrow* v. *Wilson*. vol. 12, p. 497

14. A Defendant does not, by simply defending an application against him, lose his right to security for costs. *Ibid.*

15. A new next friend of a *feme covert* Plaintiff being appointed, it was ordered, that the former next friend should give security for the costs up to that time, and the proceedings were stayed in the mean while. No security having been given, an application, that, in default of the security being completed within a given time, the bill should be dismissed with costs, was refused. *Payne* v. *Little*.
vol. 14, p. 611

16. A married woman having obtained an order to tax without the intervention of a next friend, was ordered to give security, and in default the order was to be discharged. *In re Waugh*. vol. 15, p. 508

17. A Plaintiff went abroad, pending a suit, under circumstances of suspicion. Upon his failing to shew that his residence there was temporary, he was ordered to give security for costs. *Blakeney* v. *Dufaur*. vol. 16, p. 292

18. *A. B.* was ordered to be substituted for *C. D.* (made a Defendant) as the next friend of the Plaintiff, and *C. D.* was ordered to give security for costs up to that time. Held, that the proper security was the bond of *C. D.* and of a responsible surety. *Payne* v. *Little*. vol. 16, p. 563

19. An objection as to the nature and amount of the security for costs required by the Master, held to be properly taken by motion and not by exception. *Ibid.*

20. A Plaintiff, carrying on business and domiciled in *Scotland*, took furnished lodgings in *London*, and then filed his bill. Held, that he must give security for costs. *Ainslie* v. *Sims*. vol. 17, p. 57

21. A Plaintiff described himself as resident within the jurisdiction. By amendment he described himself as of the ship *W.*, "now on a voyage to *Sydney* and back to *London*, master mariner." It not appearing when he would return within the jurisdiction, security for costs was ordered to be given. *Stewart* v. *Stewart*.
vol. 20, p. 322

22. A Plaintiff who had gone to *California*, was ordered to give security for costs. Two months afterwards, the Defendant moved that he might give security within a limited time, or that the bill might be dismissed. Held, that the motion was premature. *O'Connor* v. *Sierra Nevada Company*. vol. 23, p. 608

23. A Plaintiff having gone abroad on matters connected with the suit, was ordered to give security for costs, but having returned to this country, the order was discharged. *O'Connor* v. *Sierra Nevada Company*. vol. 24, p. 435

24. A motion, under the 20 & 21 *Vict.* c. 14, s. 24, that a limited liability company might give security for costs, on an affidavit that the company had ceased all operations, that proceedings had been taken to wind it up, that the plant had been sold, and that the company was "insolvent and unable to pay its debts already incurred," refused, the Court not feeling satisfied that the assets of the company would be insufficient to pay the Defendant's costs. *Caillaud's Patent Tanning Company (Limited)* v. *Jean Caillaud*.
vol. 26, p. 427

25. A Plaintiff described himself as resident in *Ireland*, and the Defendant, by obtaining orders for time, waived his right to security for costs. The Plaintiff

afterwards died, and his personal representative (who was also resident in *Ireland*) obtained an order to revive under the 15 & 16 *Vict.* c. 86, s. 5. Held, that the Defendant was entitled to an order for security for costs, as against the new Plaintiff. *Jackson* v. *Davenport*.
vol. 29, p. 212

26. Plaintiffs, resident abroad, being ordered to give security for costs, afterwards came to reside within the jurisdiction. The order was thereupon discharged, the Plaintiffs paying the costs of the application. *Mathews* v. *Chichester*.
vol. 30, p. 135

SELECTION OF COURT.

An order was made upon petition for the appointment of new trustees of a charity. Held, that it was not necessary that all future applications for the appointment of new trustees of the same charity should be taken before the same judge, under the 6th Consol. Ord., rule 6. *In re Watt's and other Charities.* vol. 30, p. 404

SEPARATE USE.

1. A testator gave property to trustees, in trust for his wife for life, with remainder to *M. A. T.*, then a *feme sole*, for life, in such manner, that it should not be anticipated, and that no husband should acquire any control over it. *M. A. T.* was unmarried at the death of the testator, but she married in the lifetime of the widow. Held, that both the separate use clause, and the restriction against alienation, became effectual on her marriage.

Property given to a woman for her separate use, independent of any husband, may be enjoyed by her as her separate estate, although the property becomes vested in her while discovert. If the gift be made for her separate use, without more, she has, during coverture, an alienable estate independent of her husband; but if the gift be for her separate use, without power of alienation, she has during coverture, an unalienable estate independent of her husband; in either case, however, she has, while discovert, a power of alienation.

The restraint against alienation is annexed to the separate estate only, and the separate estate has its existence only during coverture; but whilst the woman is discovert, the separate estate, whether modified by restraint or not, is suspended, and has no operation, though it is capable of arising upon the happening of of a marriage. *Tullett* v. *Armstrong*.
vol. 1, p. 1

2. A testator bequeathed a sum in trust, for his daughter, then and at his death a widow, for her separate use. After the death of the testator she married. Held, that her husband acquired no interest in the fund. *Scarborough* v. *Borman*.
vol. 1, p. 34

3. An annuity was bequeathed to a lady, who was unmarried at the death of the testator, for her separate use, independent of any husband with whom she might at any time marry, and without power of anticipation. After the death of the testator, the legatee married, became a widow, and contracted a second marriage. No disposition having been made by her while discovert. Held, that the separate use and anticipation clauses attached to the annuity during the second marriage. *Clark* v. *Jaques*. vol. 1, p. 36

4. A lady being entitled, subject to a prior life estate, to certain freehold and funded property, she settled the same, on her first marriage, for her separate use, independently of her intended, or any other husband. Her first husband died, and she married a second time. Held, that the property still belonged to her as her separate estate. *Dixon* v. *Dixon*.
vol. 1, p. 40

5. The testator desired his daughter's share to be secured in the funds, and for his trustee to pay her the dividends; and he wished that neither the principal nor interest of the funds should be subject to the control of any husband she might marry, but that the same should stand subject to her will only, properly executed, whether covert or sole, at her decease. Held, that the daughter took an absolute interest for her separate use. *Tawney* v. *Ward*. vol. 1, p. 563

6. In a marriage settlement the husband alone covenanted to settle any property which his wife, or he in her right, might thereafter acquire. Held, that property which was afterwards given to the wife for her separate use was not affected by the covenant. *Travers* v. *Travers*.
vol. 2, p. 179

7. Freeholds were conveyed by lease and release, to trustees *to the use of a feme covert* for her separate use for life, or to the use of such person as she should by writing, sealed, &c. appoint, and in default of appointment in trust to pay the rents to her for her separate use. The husband and wife by writing not under seal, for valuable consideration, undertook to execute a mortgage of the property when required. The husband died, and no mortgage had been executed. Held, that the agreement was binding upon the surviving wife. *Stead* v. *Nelson*.
vol. 2, p. 245

8. A *feme covert* made a disposition of property, as to which it was doubtful whether it was settled to her separate use. The husband disclaimed. Held,

that whether separate property or not, the husband's disclaimer gave effect to the disposition of the wife. *Rycroft* v. *Christie.* vol. 3, p. 238

9. A married woman possessing separate estate, joined her husband in an annuity deed, purporting to secure the annuity on her separate estate. The husband alone conveyed the separate property, and alone covenanted. The wife entered into no obligation, and there appeared no agreement on her part to charge her separate estate. Held, that her separate estate was not bound by the deed. *Tullett* v. *Armstrong.* vol. 4, p. 319

10. On the marriage of a female infant, her reversionary interest in *choses in action* were settled under the Court for her separate use for life, with remainder to her children. She afterwards contracted two subsequent marriages, but no further settlement was executed on those occasions. Part of the reversionary interests fell into possession during the first coverture, and part during the second, and was transferred to the trustees. Held, that she must be deemed to have married her second husband on the faith that her property was protected by the settlement, and that he was bound by it; that the third husband, who had notice of the settlement previous to his marriage, and had for some years after acquiesced in it, was bound thereby, and had no interest in the settled property; and that the arrears of separate estate due at the time of the third marriage also belonged to the wife as her separate estate. *Ashton* v. *M'Dougall.* vol. 5, p. 56

11. Property was held, in trust to pay the dividends to such person as a married woman should, but not by way of anticipation, appoint, and in default of appointment, to her for her separate use, and it was declared that the receipts of her or her appointee should be good discharges. Held, that she could not, by anticipation, charge the dividends not accrued due. *Harnett* v. *Macdougall.* vol. 8, p. 187

12. On the settlement of a ward, no clause against anticipation was attached to her separate life estate. She incumbered her interest. Held, that the settlement could not be rectified to the prejudice of her incumbrancers. *Blackie* v. *Clark*; *Cock* v. *Clark.* vol. 15, p. 595

13. A testator bequeathed his residue to his nieces *A.* and *B.*, and he then confirmed the gift to *A.* and *B.* and their children, without comprehending their husbands unless his nieces should die without issue. Held, that *A.* and *B.* took for their separate use for life, with remainder to their children, and that in default the nieces took absolutely. *Dawson* v. *Bourne.* vol. 16, p. 29

14. A married woman, having separate estate, directed a solicitor, in writing, to take proceedings for her and her children in certain suits. The suits did not, however, in any way relate to her. She was no party thereto, but her children only were made parties by their next friend. Held, that her separate estate was not liable for the costs. *Re Pugh.* vol. 17, p. 336

15. Where there is attached to the separate estate of a married woman a clause against anticipation, the Court has no power to release it from that restraint, even in cases where it would manifestly be for her benefit to do so. *Robinson* v. *Wheelwright.* vol. 21, p. 214

16. By a marriage settlement, the income of a trust fund was to be paid during the joint lives of husband and wife, as they should appoint, "but not so as to deprive themselves of the benefit thereof by charge or otherwise in the way of anticipation." Upon a divorce *à mensâ, &c.*, they appointed the income between themselves in equal moieties. The Court held the appointment valid, and acted upon it. *In re Linzee's Settlement.* vol. 23, p. 241

17. Where a wife has an estate for life in freeholds for her separate use, she can alienate that estate without any acknowledgement under the Fines and Recoveries Act (3 & 4 *Will.* 4, c. 74). *Lechmere* v. *Brotheridge.* vol. 32, p. 353

18. But a married woman cannot dispose of her fee simple lands settled to separate use, except by deed duly acknowledged under the Fines and Recoveries Act. *Ibid.*

19. With respect to personal property whether vested or contingent, settled to the separate use of a *feme coverte*, she may deal with it as a *feme sole*, and either sell or encumber it. *Ibid.*

20 Property was settled on a *feme coverte* for her separate use for life, with a power to appoint it by deed or will. She executed the power by will. Held, that the appointed property was not liable to pay a promissory note signed by her. *Shattock* v. *Shattock.* vol. 35, p. 489

21. A married woman cannot bind herself by contract, but Equity holds that she may, by contract, bind her separate estate. Her separate estate will be liable to pay any debt of hers which she has secured by writing. Equity has also held, that it is sufficient if it be shewn that the married woman verbally promised that her debt should be paid out of her separate estate. *Ibid.*

22. The separate property of a married woman is not, after her death, liable to pay her general debts either in the case of her having been absolutely entitled to the property, or of her having only a life estate with a power to dispose of it by deed or will. *Ibid.*

23. The principle of Courts of Equity is, that, as regards her separate estate, a married woman is a *feme sole*, and can act as such; but this is only so far as is consistent with the other principle, viz., that a married woman cannot enter into a contract. *Shattock* v. *Shattock*. vol. 35, p. 489
24. In the administration of the separate estate of a married woman after her decease, the debts are to be paid in order of priority and not *pari passu*. *Ibid.*

SEPARATION DEED.

[*See* MARRIED WOMAN.]

1. A deed of separation between husband and wife, containing no covenant on the part of a trustee to indemnify the husband, or other valuable consideration, is not on that account void. *Frampton* v. *Frampton*. vol. 4, p. 287
2. Observations on deeds of arrangement between husband and wife. *Jodrell* v. *Jodrell*. vol. 9, p. 45
3. Upon a separation between *A.* and *B.* (husband and wife), a deed was executed, making a provision for the wife, and all and every the children of *A.* and *B.*, who should attain twenty-one. A reconciliation took place, and another child was born. Held, upon the construction of the deed, that such last-mentioned child did not participate in the provision, *Hulme* v. *Chitty*. vol. 9, p. 437
4. To put an end to litigation between a husband and wife, the husband conveyed property to trustees, upon trust to pay his wife 3,700*l.* a year, or so much as she should "order or require." The wife was, out of that sum, to keep up an establishment for herself and children, upon such a scale as she should think fit; and the husband was to have the benefit of it, under certain restrictions. But if she should not require the whole for the purposes aforesaid, the surplus was to be paid to the husband. Held, that so long as she kept up the establishment, she was not liable to account for the surplus in her hands. *Jodrell* v. *Jodrell*. vol. 14, p. 397
5. Courts of Equity, recognizing the validity of separation deeds, will enforce them. *Sanders* v. *Rodway*. vol. 16, p. 207
6. By a separation deed, a husband covenanted with his wife's father, that his wife, during her life, might live separate from him, that he would not sue her in the Ecclesiastical Court for living separate; that he would not molest, &c. her, nor claim any of her property; and her father covenanted with the husband to maintain her and indemnify him. Upon an infraction of the covenant, by the husband molesting his wife, he was restrained by injunction. *Ibid.*
7. A married woman was entitled to a share of a residue. Before it had been received, the marriage was dissolved. Held, that the divorced wife was entitled to the fund. *Wells* v. *Malbon*. vol. 31, p. 48
8. By a separation deed, the husband covenanted with the trustees that he would not compel his wife to cohabit with him by any legal proceedings, and the trustees covenanted with the husband that she would not do the like. This covenant being no defence in the Divorce Court to a suit for a restitution of conjugal rights: Held, by the M. R., that this Court would not restrain such a proceeding by injunction; but the L. C. thought otherwise, and the point was carried by appeal to the House of Lords. *Hunt* v. *Hunt*. vol. 31, p. 89
9. Deed by which a husband makes a provision for his wife in case of a future separation is radically defective. *Proctor* v. *Robinson*. vol. 35, p. 329

SEQUESTRATION.

[*See* ATTACHMENT, PROCESS.]

1. A Defendant, against whom a sequestration had issued, was entitled to a rent-charge issuing out of the estate of *A. B.*, with power of distress; the rent-charge being in arrear, was claimed both by the sequestrators and the Defendant; *A. B.* offered to pay the arrears to the sequestrators on being indemnified; but no protection having been afforded her, she paid over the arrears to the Defendant, who threatened to distrain. Held, that *A. B.* was entitled to protection, and that an application ought to have been made to the Court for an order for her to pay; and that, under the circumstances, she was not liable to repay the amount to the sequestrators. *Wilson* v *Metcalfe*. vol. 1, p. 263
2. Choses in action are subject to the process of sequestration. In a clear and simple case a sequestration may be made effective in respect of choses in action by an order only, or a voluntary payment may be protected; in other cases it may be necessary to resort to an action or suit under the direction of the Court. *Ibid.*
3. Order made for payment to sequestrators, by a party out of whose estate the same was issuing, of a rent-charge payable to the person whose estate was sequestered. *Ibid.*
4. An attachment was issued by mistake into a county in which the Defendant (who was abroad) had not resided, and a return of "*non est inventus*" made. The Court ordered a sequestration. *Hodgson* v. *Hodgson*. vol. 23, p. 604
5. A testatrix, in 1763, bequeathed her residue in trust for the vicar of *N.* for the time being for ever, he annually preaching a sermon, the same to be paid "in

augmentation" of the vicarage. The income had not been paid from 1841 to 1863, and in 1847 a sequestration had issued against the vicar, and he had become insolvent in 1852, but no sequestration had issued upon it. The Court assumed the assent of the ordinary: and held that the gift constituted an augmentation of the living, and not a mere legacy to the vicar for the time being, and that the arrears down to 1847 belonged to the vicar, and the subsequent income to the sequestrator. *In re Parker's Charity.* vol. 32, p. 654

SERVANTS.

[*See* DESCRIPTION OF LEGATEE.]

1. Under a bequest to the testator's "servants in his service at the time of his decease," the Court held, that two outdoor servants, continuously employed at weekly wages, were entitled, but that a boy employed a few months in the year, while the testator was at his country residence, at weekly wages, to carry letters to the post, and was so employed at the testator's death, was not so entitled. *Thrupp* v. *Collett.* (No. 2.) vol. 26, p. 147
2. The Plaintiff acted as the land agent and house steward of the testator, but he resided out of the house. Held, that he was entitled, under a bequest, "to all my servants and day-labourers who shall be in my service at the time of my death one full year's wages." *Armstrong* v. *Clavering.* vol. 27, p. 226

SERVICE.

[*See* AFFIDAVIT OF SERVICE, MARRIED WOMAN, PETITION (COSTS), SERVICE OF DECREE, SERVICE OUT OF JURISDICTION, SUBSTITUTED SERVICE.]

1. Service of a *subpœna* by leaving a copy at the Defendant's residence sealed up in a letter, at the same time producing the original, held regular. *The Earl of Chesterfield* v. *Bond.* vol. 2, p. 263
2. Receiver's accounts were passed in the Master's office in the absence of the executor, the warrants having been regularly served on his clerk in Court but not having been forwarded to him. The Court, under the circumstances, remitted the matter to the Master's office, to give the executor an opportunity of stating his objections to the accounts. *Oldfield* v. *Cobbett.* vol. 2, p. 444
3. A party consenting to the alteration of a date of an order after it had been served, cannot object that the order, as altered, has not been served on him. *Stubbs* v. *Sargon.* vol. 4, p. 400
4. Where husband and wife are Defendants, and the suit does not relate to separate estate, service of a copy of the bill on the husband alone, under the 23rd General Order of *August*, 1841, is good service. *Kent* v. *Jacobs.* vol. 5, p. 48
5. To obtain an order under 24th General Order of *August*, 1841, it is necessary to produce an affidavit that no account, &c. is sought against the Defendant. *Davis* v. *Prout.* vol. 5, p. 102
6. Service of a notice of motion on a *Scotch* company, not party to the suit, at its office in *London*, held good. *Maclaren* v. *Stainton.* vol. 16, p. 279
7. According to the recent practice, the Court disapproves of the appearance of parties on the hearing of a petition, though served where their appearance is unnecessary, and their costs will be disallowed. *Day* v. *Croft.* vol. 19, p. 518
8. A party who, from the heading of the account, was properly served with a petition, but whose appearance was unnecessary, refused his costs. *In re Justices of Coventry.* vol. 19, p. 158

SERVICE OF DECREE.

[*See* FOUR-DAY ORDER.]

1. An *order* was made on a person, not a party to the cause, for payment of a sum of money within three weeks from the date of the order, but it was not served until after the expiration of that time. Held, irregular, and the subsequent proceedings to a commitment were set aside.
   Mode of enforcing payment of a sum of money under an order of the Court against one not a party to the cause. *Duffield* v. *Elwes.* vol. 2, p. 268
2. An order on a solicitor to deliver his bill requires personal service. *Re Catlin.* vol. 18, p. 510
3. A person served with the decree afterwards married. Held, that the proper way of bringing the trustees of her marriage settlement before the Court was by service of the decree. *White* v. *Stewart.* vol. 35, p. 304

SERVICE OUT OF JURISDICTION.

1. Service, out of the jurisdiction, of a *subpœna* for payment of costs, is irregular. *Hawkins* v. *Hall.* vol. 1, p. 73
2. Service abroad of a *subpœna* to appear, ordered under the 4 & 5 *Will.* 4, c. 82, in a case where *English* funds were alleged to have been improperly sold out and invested in *Austrian* stock and *Dutch* and *Portuguese* bonds. *Dodd* v. *Webber.* vol. 2, p. 502
3. Service abroad of a *subpœna* to appear and answer directed, upon a defendant of unsound mind not so found by inquisition. *Biddulph* v. *Lord Camoys.* vol. 7, p. 580
4. Upon an application to serve a *subpœna* abroad, an affidavit merely shewing the place of residence abroad of the Defendant seven weeks previous is insufficient. *Fieske* v. *Buller.* vol. 7, p. 581

5. Liberty being given to serve a *subpœna* in *Ireland*, the periods limited under the 2nd article were ten days to appear, six weeks to plead, answer, or demur, not demurring alone, but no order was made as to the time of demurring alone. *Brown* v. *Stanton.* vol. 7, p. 582

6. Leave was asked to serve a *subpœna* on a Defendant at *Holyrood House.* Held, that it was not necessary so to limit the Order, and leave was given to serve it anywhere in *Scotland.* *Blenkinsopp* v. *Blenkinsopp.* vol. 8, p. 612

7. A bill was filed by the Plaintiff, on behalf of the shareholders, against an Irish railway company and its fifteen directors, fourteen of whom were resident in *Ireland.* An application to discharge an order giving leave to serve the company with a *subpœna* in *Ireland* was refused, all the parties except the company having already appeared. *Lewis* v. *Baldwin.* vol. 11, p. 153

8. A Scotchman died in *London* possessing large real and personal estate in *Scotland*, and a comparatively very small personal estate in *England.* The Plaintiff, resident in *Scotland*, filed a bill against the four trustees, three of whom resided in *Scotland*, to administer the real and personal estate, and obtained an order, under the 33rd Order of *May*, 1845, to serve the three trustees in *Scotland.* A motion to discharge that order was refused, it not being the proper time to raise the question, and there being a case for the exercise of the jurisdiction of this Court. *Meiklam* v. *Campbell.* vol. 24, p. 100

9. As to the extent to which the Court will enter into the merits, on an application to serve its process out of the jurisdiction, and on an application to discharge such an order. *Maclean* v. *Dawson.* (No 2.) vol. 27, p. 25

10. The Court will not, on a motion to discharge an order for service abroad, enter into the question whether the matter can be better decided in a suit there than in this Court. Such a question ought properly to be raised after appearance. *Ibid.*

11. If a general power of appointment be expressly given to a married woman over any property or any interest in property, such property or interest does not thereby become settled to her separate use, nor does it become so by her exercising the power. *Hobday* v. *Peters.* (No. 2.) vol. 28, p. 354

12. The jurisdiction of the Court of Chancery is not extended by the statutes authorizing service abroad. *Cookney* v. *Anderson.* vol. 31, p. 452

13. Defendants served abroad who have appeared may still demur to the jurisdiction. *Ibid.*

14. Principles which govern the cases of jurisdiction of this Court over parties to contracts who are abroad. *Ibid.*

15. On an application to serve a bill out of the jurisdiction, the Court does not require the allegations of the bill to be stated, the Plaintiff must take the order at his own risk. *Brooks* v. *Morison.* vol. 32, p. 652

SET OFF.

1. Costs receivable and payable by two parties, ordered to be mutually set off, without regard to the lien of the solicitors. *Cattell* v. *Simons.* vol. 6, p. 304

2. The Master of the Rolls has jurisdiction to direct costs, which have been ordered by the Lord Chancellor to be paid by the Defendant to the Plaintiff, to be set off against costs ordered by the Master of the Rolls to be paid by the Plaintiff to the Defendant. The order may be obtained on motion, and the notice of motion may be given before the taxation. *Ibid.*

3. The Lord Chancellor, on the 8th of *November* ordered the Defendant to pay costs to the Plaintiff, but the order was not completed till the 23rd of *December.* The Master of the Rolls on the 15th of *December* ordered the Plaintiff to pay costs to the Defendant, and on the 19th the Plaintiff offered to set off the costs. The Defendant in *January* following issued an attachment for the costs. Held, that the Plaintiff, notwithstanding he was in contempt, might, under these circumstances, move to set off the costs. *Ibid.*

4. By the decree sums due from a legatee were ordered to be set off against her share of the testator's estate, and her costs were ordered to be paid to her solicitor. It being found that the claims against her exceeded her portion of the estate, and the legatee being insolvent, an application was made by motion, that the costs ordered to be paid to her solicitor might be carried to the credit of her account. The Court stayed the payment of the costs for a month, in order that the matter might be set right. *Nicholson* v. *Norton.* vol. 7, p. 67

5. A purchaser being a creditor of the agent of the vendor of an estate, is not entitled, by agreement with the agent alone, to place the debt due to the agent to the debit of the principal, on account of the purchase-money. *Young* v. *White.* vol. 7, p. 506

6. Bankers stopped payment, being indebted to *A.* on his separate account, and creditors of *A.* and *B.* on their joint account. *A.* assigned his credit to *A.* and *B.*, and gave notice to the bankers to transfer it accordingly, which they neglected to do. Afterwards the bankers committed an act of bankruptcy, and were declared bankrupts. Held, that, in equity, *A.* and *B.* were not entitled to

set off the two debts. *Watts* v. *Christie.* vol. 11, p. 546

7. Cross costs in two suits ordered to be set off. *Budge* v. *Budge.* vol. 12, p. 385

8. By an order of the Court, the costs to be incurred by a married woman suing by her next friend in a future proceeding were ordered to be paid to *A. B.*, her solicitor. Pending the proceedings, *A. B.* was discharged, and *C. D.* appointed solicitor. *A. B.* received the whole costs. Held, that *A. B.* could not set off, as against the amount, a debt due to him from the next friend. *Ex parte Bailey; In re Barnard.* vol. 14, p. 18

9. *A.* in an action became entitled to receive costs from *B.*, and, in a suit respecting the same matters, he became liable to pay costs to *B.* *A.*, being unable to obtain payment, asked by petition that the costs might be set off, but the application was refused. *Collett* v. *Preston.* vol. 15, p. 458

10. Equitable right of set-off enforced after a judgment at law. *Smith* v. *Parkes.* vol. 16, p. 115

11. A bankrupt executor was charged with interest on his balances, but he was allowed his costs of suit. Held, that the costs subsequent to the bankruptcy were not to be set off against his debt, which had accrued prior to his bankruptcy. *Cotton* v. *Clark.* vol. 16, p. 134

12. A creditor of an intestate purchased part of the intestate's goods from his administrator. Held, that he could not set off the amount against a debt due to him from the intestate at his decease. *Lambarde* v. *Older.* vol. 17, p. 542

13. A trading firm assigned their estate, stock, debts due to the firm, &c., to trustees, upon trust for sale and distribution, with power to carry on the business, but the trustees did not thereby undertake to discharge the liabilities of the firm. The deed of assignment contained a proviso, making it void if the firm became bankrupt before a certain day. The Plaintiffs, who were, at the date of the assignment, creditors of the firm, afterwards became indebted to the trustees, who continued to carry on the business. The firm becoming bankrupt before the day named,—Held, that the Plaintiffs had no right to a set-off, but that the result would have been different if the Plaintiffs, instead of creditors, had been debtors at the date of the assignment, and had afterwards become creditors of the trustees. *Hunt* v. *Jessel.* vol. 18, p. 100

14. Principles stated as to the right of set-off, where a bond is given by a customer to his bankers, in the following different instances:—1st, where the firm remains unaltered; 2nd, where it is changed; 3rd, the bond is assigned to the new firm; 4th, where it is assigned to a stranger; 5th, where notice of the assignment is given; and 6th, where it is omitted to be given. *Cavendish* v. *Geaves.* vol. 24, p. 163

15. If a customer borrows money from his bankers, and gives a bond to secure it, and afterwards, on his general banking account, a balance is due to the customer from the same bankers, who are the obligees of the bond, a right to set off the balance against the money due on the bond exists, both at law and in equity. *Ibid.*

16. If the firm were altered, and the bond assigned by the original obligees to the new firm, and notice of that assignment given to the debtor, and if, after this, a balance were due to him from the new firm (the assignees of the bond), then no right of set-off would exist at law, because the assignment of the *chose in action* would be inoperative at law, and the obligees of the bond, and the debtor on the general account, would be different persons; but as in equity the persons entitled to the bond, and the debtors on the general account, would be the same persons, a right of set-off would exist in this Court, and the customer would in equity be entitled to set off the balance due to him against the bond debt due from him. *Ibid.*

17. If, after the bond had been given, it had been assigned to strangers, and no notice of that assignment had been given to the original debtor (the obligor of the bond), then his rights would remain the same. Thus, if the assignment had been made to the stranger before any alteration of the firm, then the right of set-off would still remain at law, where the obligees of the bond and the debtors on the general account would be the same persons, and in equity also, if the matter of account were brought here, as the assignees of the *chose in action* would be bound by the equities affecting their assignors. *Ibid.*

18. But if notice of that assignment had been given to the original debtor, no right of set-off would exist in this Court for the balance subsequently due from the bankers to the obligor; because the persons entitled to the bond would, as the obligor knew, be different persons from the debtors to him on the general account, with whom he had continued to deal. *Ibid.*

19. If the assignment of the bond had been made to the new firm, with notice to the obligor, they would, if debtors on the general account, be liable to the same rights in equity of set-off as if they had been the obligees. *Ibid.*

20. If, after the alteration of the firm, and after the assignment of the bond to the

new firm, with notice to the debtor or obligor of that assignment, an assignment had been made of the bond to strangers, and no notice of that second assignment given to the obligor, then the rights of set-off would still remain to him in equity, as against the first assignees, of whose assignment he had notice; and the second assignees would, in equity, be bound by it, because the assignees of the bond take it subject to all the equities which affect the assignors. *Cavendish* v. *Geaves.* vol. 24, p. 163

21. Bankers, to whom a customer had given a bond, assigned it over to third parties, who gave no notice to the obligor. Held, that notwithstanding the assignment, the customer's right continued, of setting off moneys due to him from his bankers against the bond. *Ibid.*

22. Two sons had, as against their father, a lien on his estate, for an outlay made thereon by them; on the other hand, the father had a claim against the sons in respect of a suretiship entered into by him for them. Held, that these demands might be set off in equity. *The Unity Joint Stock Mutual Banking Association* v. *King.* vol. 25, p. 72

23. In a suit by the next of kin of *John*, against the representatives of *James*, voluntary payments which had been made by the representatives of *James*, out of his estate, under verbal directions given by him, were held not to be a satisfaction, *pro tanto*, of the Plaintiff's right to *John*'s residuary estate, or to be capable of being set off against the Plaintiff's demands. *Cowleshaw* v. *Hardy.* vol. 25, p. 169

24. *A. B.* was entitled to a share of funds held upon the trusts of his father's marriage settlement, and for which his father's estate was liable. He was one of his father's executors. In a suit to administer the trusts of the settlement and his father's estate, a large balance was found due from *A. B.* as executor. Held, that the trustees of the settlement were entitled to retain such balance out of *A. B.*'s share, and that purchasers from *A. B.*, pending the suit, with notice of the proceedings, were bound by the same equity. *Irby* v. *Irby.* vol. 25, p. 632

25. The accruing payment of an annuity due to a wife could not be set off against a prior existing debt of the husband. *Payne* v. *Little.* vol. 26, p. 1

26. A husband, being held liable at the suit of the children of his wife's first marriage to replace trust funds received by him, claimed a large sum expended in maintaining, &c. the children after the second marriage. The claim was disallowed. *Grove* v. *Price.* vol. 26, p. 105

27. At the death of the testator, *A. B.* owed him 350*l.* for the purchase of his business. After the testator's death, *A. B.* sold the business to a legatee for 350*l.*, and the legatee gave the executors his promissory note as a collateral security for *A. B.*'s debt. Held, that the executors had no right to set off the debt against the legacy nor any right of retainer as against the mortgagee of the legacy. *Smee* v. *Baines.* vol. 29, p. 661

28. A trustee or executor, when he receives notice that a legatee has charged his legacy, is bound to withhold all further payments to that legatee. All right of set-off and adjustment of equities between the legatee and the executor existing at the date of the notice have priority over the charge, but the trustees can create no new charges or rights of set-off after that time. *Stephens* v. *Venables.* (No. 1.) vol. 30, p. 625

29. Executors granted a lease of part of the testator's property to a legatee, who afterwards incumbered his legacy. Notice of the charge having been given to the executors: Held, that they had, as against the mortgagee, a right to set off the rent due from the legatee at the date of the notice, but not the subsequent rents. *Ibid.*

30. The purchaser of a debt commenced an action at law to recover it in the name of the assignor. The debtor pleaded a parol agreement between him and the assignor by way of set-off. Thereupon the Plaintiff at law filed a bill to obtain equitable relief. It was dismissed with costs. *Bolt* v. *White.* vol. 31, p. 520

31. A legacy may be set off against a debt of the legatee to the testators, though such debt is barred by the Statute of Limitations. *Coates* v. *Coates.* vol. 33, p. 249

SETTING ASIDE DEEDS.

[*See* CATCHING BARGAIN, DELAY, FRAUD, MISREPRESENTATION, MISTAKE, UNDUE INFLUENCE.]

1. As to the necessity of a reconveyance on setting aside a deed in equity. *Attorney-General* v. *Magdalen College.* vol. 18, p. 223

2. Form of decree on setting aside deeds partially, viz., as against creditors only. *Bott* v. *Smith.* vol. 21, p. 511

SETTING DOWN.

[*See* SHORT CAUSE.]

1. The twelve days for setting down a demurrer under the 34th General Order of *August*, 1841, are not *office* days. *Charlton* v. *Richmond.* vol. 4, p. 397

2. A bill of revivor and supplement was filed to bring new trustees before the Court. It was supplemental as to the trustees, but a bill of revivor as regarded

the other Defendants. Held, that it was only necessary to set down the bill to be heard as against the new trustees. *Hussey* v. *Divett.* vol. 7, p. 499

SETTLED ACCOUNT.

[*See* ACCOUNT, PLEA, RELEASE.]

1. An account between an aged tenant for life and the remainderman (who was also executor), which was settled and signed by the tenant for life under the advice of her solicitor, set aside, on the ground of the executor not having furnished full information, of the account being founded on an erroneous opinion of counsel as to the rights of the parties, obtained *ex parte* by the executor, and of the account being complicated in its form, and though professing to be made in conformity with the opinion, yet containing an addition of a purchase and sale between the parties. *Pickering* v. *Pickering.* vol. 2, p. 31

2. An account was settled, and releases executed between the residuary legatees of a partner and the representatives of the surviving partner. Numerous and important errors in the account having been proved, the release was set aside, but having regard to the lapse of time, and the loss of books and documents, the Court declined opening the accounts altogether, but gave liberty only to surcharge and falsify. *Millar* v. *Craig.* vol. 6, p. 433

3. A husbandry lease of charity lands for 200 years at a fixed rent, cannot, unless there be some special reason, be supported in equity.

Such a lease of charity lands cannot be supported upon any custom of the country in which the lands are situate. *The Attorney-General* v. *Pargeter.* vol. 6, p. 150

4. *A. B.*, entitled to a share of a residue, made a settlement of the balance appearing upon a settlement of accounts with the executors upon himself, and afterwards on *C. D.*, a volunteer. Held, that *C. D.* could not against the will of *A. B.* open the settlement of accounts with the executors. *Parker* v. *Bloxam.* vol. 20, p. 295

5. Practice under the Settled Estates Leases and Sales Act. *Re Brealey's Settled Estates.* vol. 24, p. 220

6. Where a married woman is the petitioner, her consent, under the 19 & 20 *Vict.* c. 120, ss. 37, 38, should be taken subsequent to the petition being answered, but before any further proceeding, and an independent solicitor should take her consent. *Ibid.*

7. Whether the Court can direct leases and sales under the 19 & 20 *Vict.* c. 120, in a cause without a petition, *quære*. *Harvey* v. *Clark.* vol. 25, p. 7

8. The effect and operation of the Settled Estates Act (19 & 20 *Vict.* c. 120) explained. *Grey* v. *Jenkins.* vol. 26, p. 351

9. The expression "persons entitled," in the Settled Estates Act, means persons beneficially entitled, and all persons beneficially entitled must concur. Trustees can only consent for unborn children, but trustees with a power of sale may join in a sale which will bind all persons claiming under their trust. *Ibid.*

10. Under the Settled Estates Act (19 & 20 *Vict.* c. 120), the Court will not authorize the sale of a portion of the estate, for raising money to make the necessary roads on building land; but it will authorize leases on the terms of the lessees' making such roads. *In re Chambers; In the matter of the Settled Estates Act.* vol. 28, p. 653

11. Declaratory decree that it is fit and proper that an application should be made to parliament to extend the leasing powers affecting a settled estate. *Savile* v. *Bruce.* vol. 29, p. 557

12. In taking accounts in chambers the Court never disturbs a settled account between the parties. *Newen* v. *Wetten.* vol. 31, p. 315

13. Upon a petition under the Settled Estates Act, an infant, remotely interested, had been born after the advertisement had been made. The Court permitted him to be made a party by amendment, and dispensed with further advertisements. *Re Horton's Settled Estate.* vol. 34, p. 386

14. Order made under the Settled Estates Act, saving the rights of pecuniary legatees interested in the estate, who were numerous. *In the matter of Parry's Will.* vol. 34, p. 462

15. Upon the dissolution of a partnership, and the settlement of all accounts between the partners *A. B.* (the continuing partner) took some of the debts as good debts. One turned out to be bad, the securities for it having been fraudulently abstracted by a clerk. Held, that *A. B.* could not sustain a bill to rectify or set aside the settlement of accounts. *Laing* v. *Campbell.* vol. 36, p. 3

SETTLEMENT.

[*See* MARRIAGE SETTLEMENT.]

SEVERING IN DEFENCE.

1. Where several persons are made Defendants in respect of a joint fiduciary character only, or if any beneficial inte-

rest which they may have does not conflict with their duty, they ought not to sever in their defences, otherwise one set of costs only will be allowed them. *Gaunt* v. *Taylor*. vol. 2, p. 346

2. The same solicitor put in and set down for hearing two pleas for want of parties for two several Defendants, and they were both allowed: the Plaintiff was ordered to pay the costs of one only of such pleas. *Tarbuck* v. *Woodcock*. vol. 3, p. 289
3. The two co-heiresses of a trustee, who lived at a distance from each other, were made parties to a suit for enforcing the performance of marriage articles. They submitted to act as the Court might direct, and defended separately. Held, they were entitled to two sets of costs. *Aldridge* v. *Westbrook*. vol. 4, p. 212
4. Husband and wife, entitled in the wife's right to a share of residue, were living apart, and they defended separately. Held, entitled to only one set of costs. *Garey* v. *Whittingham*. vol. 5, p. 268
5. A party entitled to a share of the residue became bankrupt. Held, that he and his assignees were entitled to one set of costs between them. *Ibid.*
6. Costs refused to one of two trustees who had declined to transfer a fund to the party entitled, and had severed in his defence. *Allen* v. *Thorp*. vol. 7, p. 72
7. Difficulty in determining whether Co-Defendants have improperly severed in their defences. *Greedy* v. *Lavender*. vol. 11, p. 417
8. A local board of health held not justified in polluting the surface water which flowed by an open gutter into a canal, by diverting it into a sewer, and passing the sewage into it. *The Manchester, Sheffield, &c. Railway Company* v. *The Worksop Board of Health*. vol. 23, p. 198
9. Where a canal company had a statutory power to supply it with water out of such "brooks, streams and watercourses as should be found within a certain distance." Held, that it would be difficult to hold that the mere surface water of a road, not arising from any spring or natural certain supply, could fall within the act, so far and to such an extent, as to exclude a local board of health, under the Public Health Act, from making a system of drainage essential to the district, which, offending against the rights of no one in any other particular, merely allowed to flow through gratings into the sewer the water collected on a public road from rain and from the overflowing of the surplus of the neighbouring houses, which water had theretofore flowed down an open gutter into a canal. *Ibid.*
10. The Metropolitan Board of Works constructed a sewer in the high road, and the *Lewisham* district board made a branch sewer running into it. The combined effect of the two was, to drain an ornamental pond and rivulet in the adjoining lands of the Plaintiff. In a suit to obtain an injunction, Held, first, that neither of the boards were, in respect to the diversion of the water, to be treated as clothed with the rights or obligations of adjoining landowners. Secondly, that they had not exceeded their statutory rights so as to be liable to be restrained by injunction; thirdly, but that if either of these boards were producing this injury to the Plaintiffs, by the unskilful or improper construction of the sewer, this Court would interfere to prevent it; and fourthly, that such not being the case, the rights of the Plaintiffs were limited to a claim for compensation under the 11 & 12 *Vict.* c. 112, s. 50, and the 18 & 19 *Vict.* c. 120, s. 86. *Stainton* v. *Woolryck; Stainton* v. *The Metropolitan Board of Works and the Lewisham District Board of Works*. vol. 23, p. 225
11. Two trustees, who severed in their defences, were allowed one set of costs only. One of them, by his answer, imputed misconduct to the other, which rendered it necessary for him to sever, and he asked for the whole costs. The Court being unable, on the answers, to determine the question, left the division to the Taxing Master. *Course* v. *Humphrey*. vol. 26, p. 402
12. The Court does not compel persons who have different shares in an estate to appear by the same solicitor, because their interests, as regards their opposition to the claim of the Plaintiff, are identical. Therefore, the bill being dismissed with costs, each of such persons gets his separate costs. But a trustee and his *cestui que trust* gets but one set of costs between them; and so the person entitled to a share and all his incumbrancers have but one set of costs, which is payable to the first incumbrancer. *Remnant* v. *Hood*. (No. 2.) vol. 27, p. 613
13. One set of costs being allowed to trustees who had severed in their defences, the division of it was left to the Taxing Master. *Attorney-General* v. *Wyville*. vol. 28, p. 464

SHARES.

[*See* DESCRIPTION OF GIFT, SHARE (FORFEITURE), SHARE (TRANSFER), SHAREHOLDER.]

1. The purchaser of "scrip certificates" in a proposed railway company which had not obtained any act of parliament. Held, after the act had passed, and in the absence of any special contract, not bound to take a transfer of the corresponding shares from his vendor, or to

indemnify him from the amount of calls subsequently made. *Jackson* v. *Cocker.* vol. 4, p. 59

2. Held, that scrip shares were not inalienable. *Ex parte Bagge; Re The Northern Coal Mining Company.* vol. 13, p. 162
3. A company was authorized by some acts of parliament to create new shares "having preference in payment of dividends," and by others to create new shares, "and to guarantee dividends or interest" not exceeding a stated rate per annum. The company created five sorts of preferential shares, some with a "preferential dividend out of working profits," others with "preferential dividends," and others with a "preferential interest or dividend," but giving to one class only a right to their arrears. Held, that all the preference shareholders were entitled to have the deficiencies of their dividends or interest in one year made up in the succeeding years, in priority to any payment to the ordinary shareholders, but without interest. *Corry* v. *The Londonderry and Enniskillen Railway Company.* vol. 29, p. 263
4. The remedy for recovering the deposit on shares is by action at law and not by bill in equity. *Denton* v. *Macneil.* vol. 35, p. 652

SHARES (FORFEITURE).

1. Directors had power, on nonpayment of calls, to sue for them or forfeit and sell the shares. They proposed to a shareholder to relieve him from further liability, on his consenting to an absolute forfeiture. He assented, but the directors, having afterwards discovered that he was in good circumstances, refused to complete. The Court declined to compel the directors specifically to perform the contract. *Harris* v. *North Devon Railway Company.* vol. 20, p. 384

SHARES (TRANSFER).

[*See* TRANSFER.]

1. A transfer of shares in a banking company, though invalid at law for want of a proper consent of a "Board of Directors" to the transfer, yet supported in equity, the transfer having been made in "The Share Register Book," three directors having given the customary certificate of the transfer, and a return having been made to the Stamp Office that the Plaintiff had ceased to be a member. *Shortridge* v. *Bosanquet.* vol. 16, p. 84
2. In *October* a banking company stopped payment. The Plaintiff had in *July* sold his shares; the purchaser had obtained certificates from three directors of ownership, the transfer had been entered in "The Share Register Book," and the company had returned to the Stamp Office that the Plaintiff had ceased to be a member; but no formal consent of a "Board of Directors" to the transfer had been obtained, as required by the company's deed. The company instigated a creditor to sue the Plaintiff, and to enable him to succeed, they retransferred the shares into the Plaintiff's name in their books, and made a new return to the Stamp Office, including him as a shareholder. The creditor recovered at law. Held, nevertheless, that in equity the Plaintiff was no longer a shareholder as between him and the company; and secondly, that the proceedings of the creditor being collusive, he ought not in equity to be allowed to enforce his judgment. *Shortridge* v. *Bosanquet.* vol. 16, p. 84
3. Shareholders wishing to retire transferred their shares to directors, who received a large sum of money therewith. Held, that, the essence of the transaction being, that a benefit should be obtained by a director (who was a trustee for the company) and his family, and it being manifest that the transaction itself could not have taken place without the director's sanction, it could not stand; and the retiring shareholders, on the company being wound up, were placed on the list of contributories. *In re Cameron's Coalbrook, &c. Railway Company; Ex parte Bennett.* vol. 18, p. 339
4. By the rules of a company, no transfer of shares was to be made until all arrears of calls had been paid. The manager of the company transferred to a mortgagee his own shares, on which an arrear of calls was due, without paying them. The committee of management of the company having afterwards recognized the mortgagee as a shareholder: Held, that they could not claim from him the arrears due at the time of the transfer. *Watson* v. *Eales.* vol. 23, p 294
5. A joint stock company, whose shares are represented to be transferred by delivery, is not necessarily illegal at common law. *Re The Mexican and South American Company.* vol. 27, p. 474
6. It was provided by the deed of settlement of a joint stock company, "that no shareholder should be at liberty to transfer his shares, except in such manner as a board of directors should approve." A shareholder contracted to sell his shares; Held, that he was bound specifically to perform the contract by the execution of a transfer, though the directors refused to allow it. *Poole* v. *Middleton.* vol. 29, p. 646
7. A shareholder executed a transfer of his shares, which he took, together with his certificate of shares, to the company's office for registration. He left the transfer, but refused to leave the certificate for the

inspection of the directors. Held, that the Court would not, on motion under the 25 & 26 *Vict.* c. 89, s. 35, compel the company to register the transfer, and the Court refused a motion for that object with costs. *Re The East Wheal Martha Mining Company.* vol. 33, p. 119

8. By the deed of settlement of a company, shares might be transferred to any person approved by the court of directors; but it provided that no person should be entitled to become a transferee unless and until he should be approved of by the court. Held, that the power of rejection must be exercised reasonably, and that a refusal to make any transfer would not be a reasonable exercise of it. *Robinson and The Alliance Bank* v. *The Chartered Bank of India, &c.* vol. 35, p. 79

9. A general demurrer to a bill filed by a shareholder against directors, who had a discretionary power of objecting to a transferee, to compel them to approve of a transfer to some proper person, overruled; the bill alleging, in substance, that they had refused to make any transfer at all. *Ibid.*

10. Distinction between a transfer of shares which is fraudulent and void as against the transferee, and one which is so as regards the company. *Re Haford Lead Mining Company.* vol. 35, p. 391

SHAREHOLDER.

[*See* COMPANY, REGISTER.]

1. A person at his death was member of a banking company established under the 7 *Geo.* 4, c. 46, and subject to its liabilities. After the expiration of three years a suit was instituted for the administration of his estate, and the common decree was made for taking an account of his debts. Persons who were creditors of the banking company at the testator's death claimed before the Master. Held, that their claims did not come within the scope of the decree; secondly, that their claims were barred by the lapse of three years. *Barker* v. *Buttress.* vol. 7, p. 134

2. By a deed of settlement of a public company, it was provided, that the company was to continue forty years:—"that the shares of deceased proprietors should belong to their personal representatives," but that executors should never be deemed proprietors until they should be duly admitted proprietors, on the approval by the directors, and had executed the deed, &c., "and then, but not before," they were to become proprietors, and entitled to receive the dividends. Held, that upon the death of a proprietor, his estate continued liable, until a new personal liability had been created pursuant to the deed. *In re The Northern Coal Mining Company (Blakeley's case).* vol. 13, p. 133

3. A bill by a railway company, to compel a mortgagee of shares not standing in his name to pay the calls, cannot be sustained. *The Newry, &c. Railway Company* v. *Moss.* vol. 14, p. 64

4. *A.* advanced money to *B.* on the security of railway shares. They were transferred into the name of *C.*, to secure *A.*, and subject thereto for *B.* *C.* died insolvent. Held, that *A.* was not liable, at the suit of the company, for the arrears of calls on the shares. *Ibid.*

5. Projectors of a railway retained 4,000 shares for themselves, but did not state the fact in their prospectus. Held, not to be a ground for annulling a contract to take shares in the concern. *Pulsford* v. *Richards.* vol. 17, p. 87

6. Upon the formation of a company, the directors, and the persons who take shares, are contracting parties, and the prospectus issued by the directors is the representation "*dans locum contractus.*" If this be false, and cannot be made good by the persons making them, the contract may be avoided. It has, however, to be considered, whether it is reasonable to believe, that if the real truth had been stated, the shares would not have been taken. *Ibid.*

(*Jennings* v. *Broughton.* vol. 17, p. 234)

7. In suits to set aside contracts on the ground of misrepresentation, the burden lies on the Plaintiff of proving that the representations were false, and that he acted on the faith of them. *Ibid.*

8. Upon a bill by a shareholder against the projectors and lessees of a mining company to rescind the contract and return the shares, on the ground of misrepresentation in the prospectus. Held, upon the evidence, that although it stated, in glowing and exaggerated colours, what was really in the mine, yet these were not such misrepresentations as to avoid the contract. Held also, that the same sources of information were open to the Plaintiff and Defendant, and that they availed themselves of them, and the bill was dismissed with costs. *Ibid.*

9. An execution against a company having proved ineffectual, the Court allowed the creditor to issue execution against some of its members to the extent of their shares not paid up, notwithstanding the company was about to be wound up. *Re Phillips; Ex parte Warkworth Dock Company.* vol. 18, p. 629

10. A judgment creditor of a banking company may prove his debt in this Court against the assets of a deceased shareholder, without first obtaining the leave of a court of law to issue execution

against the testator's assets under the 7 & 8 *Vict.* c. 113, s. 13. *Re Walton's Estate.* vol. 23, p. 480

11. Where a creditor obtained a judgment against a company, and then proceeded to enforce it against the shareholders, the Court considered that he was bound to give credit to one shareholder whom he sued, for moneys previously received from others, but the Court would not disturb the appropriation of part of the moneys the creditor had received in payment of his costs of his ineffectual proceedings against other shareholders. *Green* v. *Nixon.* vol. 23, p. 530
12. Form of removing the name from the register of shareholders under the Companies Act, 1862. *Re The Iron Ship Building Company.* vol. 34, p. 597
13. Though the articles of association of a company materially extend the objects of the company beyond those stated in the prospectus, still, if the prospectus refers to the articles, a person taking shares upon the faith of the prospectus is bound by the articles, unless they are wholly incompatible with the prospectus. *Re The Hop and Malt Exchange and Warehouse Company (Limited); Briggs's case.* vol. 35, p. 273
14. Every subscriber in a public company is bound to know the articles of association, and cannot complain of anything disclosed in them, which, if he does not know, he might and ought to know. *In re The Anglo-Greek Steam Navigation, &c. Trading Company (Limited).* vol. 35, p. 397
15. Where an action is brought for calls, and in which the question whether the Defendant is or not a shareholder will be determined, this Court, on an application by such Defendant to correct the register, by omitting his name, will postpone its decision until the result of the action is known. *The Alexandra Hall Company; Roebuck's case.* vol. 35, p. 467
16. Prospectuses of a company are always coloured, but if a material fact is stated in them which is untrue, and upon the faith of which a person takes shares, he is entitled, as against the company, to require allotment of those shares to be cancelled and his deposit repaid. *Denton* v. *Macneil.* vol. 35, p. 652

SHERIFF.

[*See* INTERPLEADER, PROCESS.]

1. A sheriff seized the goods of a tenant of lands over which a receiver had been appointed. He retained half a year's rent and paid over the balance to the judgment creditor. The receiver claimed the rent, and the Plaintiff brought an action against the sheriff, who applied to the Court for protection as between these adverse claims. The Court declined to interfere. *Try* v. *Try.* vol. 13, p. 422
2. The present liability, in equity, of the sheriff for an escape is the loss actually sustained, and this Court will ascertain the amount of damages. *Moore* v. *Moore; In re Moxley.* vol. 25, p. 8
3. The principle on which the amount is to be ascertained is, by charging the sheriff with the whole debt, and throwing on him the *onus* of proving that less would have been recovered if the prisoner had remained in custody or given bail. *Ibid.*
4. A person was taken upon an attachment for nonpayment of money. The sheriff, without taking bail, allowed him to go at large, on his promise to surrender. The sheriff's officer, having called on him to surrender, he shot himself before a recapture, but the officer retained his body. Held, that the sheriff was liable as for his escape. *Ibid.*

SHIP.

[*See* LIEN, NOTICE.]

1. Where the members of a trading partnership are interested in a ship, the names of all the partners should appear on the ship's register; and a ship belonging to a partnership having been registered as belonging to two partners carrying on trade under a particular firm, it was held, that a third partner who formed one of the firm, but whose name was not on the register, had no interest in the ship. *Slater* v. *Willis.* vol. 1, p. 354
2. The master of a ship is bound to employ his whole time and attention in the service of his employer, and *semble*, that a custom allowing such master to trade on his private account during the voyage cannot be maintained. *Gardner* v. *M'Cutcheon.* vol. 4, p. 534
3. The master and part owner of a ship purchased goods during the voyage, which his answer stated were purchased out of private property and the profits of private trade during the voyage, but the Court considering there were strong grounds for thinking that the goods were purchased with partnership property, or with money for which the Defendant was accountable to the partnership, and that they belonged to the partnership, restrained him from receiving the goods. *Ibid.*
4. Bill of sale of a whaler, then absent on a fishing adventure, together with all masts &c., boats, oars, and appurtenances. Held, not to pass the cargo of oil, &c. acquired during the adventure. *Langton* v. *Horton.* vol. 5, p. 9
5. Bill of sale of a ship, though absolute in its terms, may, notwithstanding the ship

registry acts, be, in equity, held a mortgage, if such appears to have been the real intention of the parties. *Langton* v. *Horton*. vol. 5, p. 9

6. A mortgagee out of possession of a whaler, is not entitled as against the mortgagor or his assignee of the cargo, to an allowance for the use of the ship. *Ibid.*

7. Circumstances under which a third party may deal with a correspondent abroad with respect to a cargo, without inquiring as to the rights and relations existing between the charterer and his correspondent. *Zulueta* v. *Tyrie*. vol. 15, p. 577

8. The owner of seven-eighths of a ship mortgaged it. The owners afterwards sent it to obtain a cargo of guano, and, on its return, the mortgagee, for the first time, took possession, and he claimed seven-eighths of the gross produce of the cargo. Held, that the expenses of outfit and of the voyage had priority over his claim; and secondly, that in the absence of any special agreement, he had no right, as mortgagee of the ship, to any part of the cargo. *Alexander* v. *Simms*. vol. 18, p. 80

9. Between the dates of the bill of sale of shares of a ship and the entry of the transfer on the register, the purchaser had notice that the vendor, though the shares were registered in his name, was a trustee. The case presenting a *primâ facie* appearance of fraud, the Court granted an interim injunction to restrain the purchaser from dealing with the shares or indorsing the transfer on the certificate of registry, so as to insure the effective determination of questions at the hearing. *Armstrong* v. *Armstrong*. (No. 1.) vol. 21, p. 71

10. The policy of the Ship Registry Act, in disregarding interests not appearing on the register, is inapplicable both to the money arising from the sale of a ship and to the produce of the freight. *Ibid.*

11. Where a party who appears on the register to be the absolute owner of a ship, enters into an agreement for valuable consideration, admitting he is a trustee, and engaging to sell the ship and hand over the produce to the true owner, the Court, notwithstanding the Ship Registry Act, will enforce the agreement. *Ibid.*

12. Shares in a ship purchased with *A.*'s money were registered in *B.*'s name. After *A.*'s death, *B.* entered into an agreement with his representatives, admitting their right and for valuable consideration agreeing to sell the shares at the end of twelve months, and to account to the representatives for the proceeds. *B.* accordingly sold to *C.* Held, that though the Ship Registry Act prevented the representatives enforcing any right against the ship itself, still that they were entitled to recover the purchase-money in the hands of *C.* *Armstrong* v. *Armstrong*. (No. 1.) vol. 21, p. 71

13. The right to freight is incidental to the ownership of the vessel which earns it, and therefore a transfer of a share in a ship passes the corresponding share in the freight, under an existing charter-party, without the mention of the word "freight." *Lindsay* v. *Gibbs*. vol. 22, p. 522

14. In equity an assignment of freight to be earned is valid. *Ibid.*

15. A ship was chartered by her owner. Afterwards, in *June*, 1854, he sold twenty-four shares of the ship to *A.*, and the remaining forty shares to *B.*, and in *December* he assigned the freight to *C.* *A.* registered before, and *B.* after *C.*'s assignment; but *C.* gave the first notice to the charterers. Held, that *C.*'s right to the freight had priority over *B.*, but not over *A.* *Ibid.*

16. One who is interested in the freight alone, severed from the ship, held liable to contribute his proportion of the expenses incurred by the ship in earning the freight. *Ibid.*

17. *A. B.*, having insured his ship, afterwards transferred it, but without the policy, to *C. D.* The transfer on the register, though absolute in form, was, in fact, by way of mortgage. The ship having foundered, held, that *A. B.*, being liable for the mortgage debt, had a sufficient interest in the ship to entitle him to recover the whole loss. Held also, that the policy of the Navigation Laws (17 & 18 *Vict.* c. 104) did not apply to such a case. *Hutchinson* v. *Wright*. vol. 25, p. 444

18. One of the rules of a mutual marine assurance society provided, that "no vessel which is mortgaged shall be insured, unless the mortgagee give a written guarantee, to the satisfaction of the committee, for payment of all demands on the said vessel." Held, that this applied only to a ship mortgaged at the time of effecting the insurance, and that it did not render a guarantee necessary when a ship was mortgaged after being insured. *Ibid.*

19. *A.* and *B.* were co-owners of a ship, which had been chartered for a voyage. *A.* assigned his share of the freight to *C.*, who gave no notice of it to *B.*, and both the ship and freight were afterwards insured by the ship broker, according to the ordinary course of dealing between *A.* and *B.* Held, that *C.* must bear his share of the wages of the crew, and the expenses of the insurance of the ship and freight. *Lindsay* v. *Gibbs*. (No. 2.) vol. 26, p. 51

20. A shipowner, in his written instruc-

tions to the captain, directed him, in case of emergency, to apply to certain firms abroad, "who would give him any assistance required." Held, that this did not authorize the captain to do anything not included in his general power and authority as captain. *Lyall* v. *Hicks*. vol. 27, p. 616

21. To authorize a captain to hypothecate the ship or freight for repairs, the necessity for such hypothecation must exist; if, therefore, the agent of the shipowner in a foreign port has sufficient funds in his hands for the repairs, the captain cannot hypothecate. *Ibid.*

22. Where a person, having no title to a ship, procures it to be registered in his name, this Court will compel him to retransfer it to the rightful owner and account for the earnings, even though there has been no fraud, and notwithstanding "The Merchant Shipping Act, 1854." *Holderness* v. *Lamport*. vol. 29, p. 129

23. Under "The Merchant Shipping Amendment Act, 1862" (*25 & 26 Vict.* c. 63, s. 54), the liability of the owners of a ship wrongfully occasioning loss of life to the "crew" of another ship is limited to 15*l.* and not 8*l.* per ton. *Glaholm* v. *Barker*. vol. 34, p. 305

24. This Court cannot decree the specific performance of a charter-party, but it can restrain the parties for employing the ship in a manner inconsistent with the rights under a charter-party. *Le Blanch* v. *Granger*. vol. 35, p. 187

25. Whether, when the ship and owner are both in this country, the captain can, without the special authority of the owner, charter the ship, *quære*.

SHORT CAUSE.

1. It is contrary to the practice to advance a foreclosure suit to be heard as a short cause, unless with the consent of the Defendant. *Lewin* v. *Moline*. vol. 1, p. 99

2. An application to the Master of the Rolls, on the certificate of Plaintiff's counsel, to advance a cause as a short cause, was refused on the Defendant's counsel stating that it was not a short cause, and the costs of the motion were reserved. The cause afterwards came on in its regular course, when the Court, being of opinion that the cause was a proper one to be heard as a short cause, gave to the Plaintiff the costs of the motion. *Aldworth* v. *Robinson*. vol. 2, p. 287

SHORTHAND WRITER.

[*See* TAXATION.]

SIMPLE CONTRACT DEBT.

[*See* SPECIALTY DEBT.]

SOLICITOR.

[*See* AUTHORITY TO SUE, IRREGULARITY, PARTNERSHIP, PRIVILEGE FROM ARREST, PRODUCTION OF DOCUMENTS, RELEASE, RETAINER, SOLICITOR (DISCHARGE), SOLICITOR'S LIEN, TAXATION, TRUSTEE PROFITING BY TRUST, TRUSTEE PURCHASING.]

1. Liability of a solicitor in a proceeding in which funds are lost by his neglect. *Wiggins* v. *Lord*. vol. 4, p. 30

2. If a solicitor, knowing that the money in Court belongs to one person, presents a petition and obtains payment to another, he is personally responsible. The principle applies if he has merely a knowledge of circumstances which, if duly considered, would lead to a knowledge of the fact. *Exart* v. *Lister*. vol. 5, p. 585

3. A petition was presented in the names of *A.* and *B.*, but without the authority of *A.* Held, that having regard to the rights of the respondents, the petition could not be ordered to be taken off the file on the application of *A.* *Tarbuck* v. *Tarbuck*. vol. 6, p. 134

4. A bill being filed without the written authority of one of several Co-Plaintiffs, and the evidence being unsatisfactory as to the retainer, his name was struck out as Co-Plaintiff with costs to be paid by the solicitor. *Pinner* v. *Knights*. vol. 6, p. 174

5. Where a solicitor files a bill without a written authority, the *onus* of proof is cast on him. If there be any doubt on the matter, the Court will hold him liable. *Ibid.*

6. A bill filed without the authority of the Plaintiff, was dismissed with costs, and the Plaintiff was taken under an attachment for nonpayment of costs. The Court, on motion, ordered the solicitor to indemnify *A.*, but refused to release *A.* as against the claim of the Defendants. Held also, that *A.* was not, on such an application, to be deprived of his right against the solicitor to damages for his imprisonment. *Hood* v. *Phillips*. vol. 6, p. 176

7. The name of a person who had been made the next friend of an infant Plaintiff without his authority, ordered to be struck out, but liberty was given to the Co-Plaintiffs to amend by naming a new next friend. *Ward* v. *Ward*. vol. 6, p. 251

8. As to the liability of the next friend in such a case as regards the Defendant. *Ibid.*

9. Solicitor struck off the rolls for fraudulently abusing the confidence of his client. *In re Martin.* vol. 6, p. 337

10. The Court has no authority, upon a petition by a client against his solicitor, to give relief founded on a special agreement. *Alexander* v. *Anderdon.* vol. 6, p. 405

11. A suit was prosecuted through a solicitor, and, as the Plaintiffs alleged, without their authority. The Defendant gave notice of motion to dismiss the bill for want of prosecution, which being served on the solicitor, he requested the Plaintiffs to name a new solicitor, which they refused to do. The solicitor then moved that he might be dismissed as solicitor. Held, that no such order could be made, but personal service on the Plaintiffs of the notice of motion to dismiss was ordered. The Plaintiffs took no step to relieve themselves from their liability. Held, that the Defendant was entitled to have the bill dismissed, with costs to be paid by the Plaintiffs, leaving them to obtain, as against the solicitor, any remedy they might have. *Tarbuck* v. *Woodcock.* vol. 6, p. 581

12. Observations on the imperfect mode, in practice, in which solicitors are remunerated for their services. *Lucas* v. *Peacock.* vol. 8, p. 1

13. By the practice of the Court, solicitors are often not paid at all, or very ill paid, for very important services, and therefore they ought not to be deprived of any lawful fees which the practice warrants, upon the notion that the business charged may have been of no practical benefit. Thus, where a solicitor acts for a Plaintiff, and for some Defendants, he is entitled to charge such Defendants for the Plaintiff's warrants served on his clients the Defendants, and for attendance thereon, and for separate copies of the proceedings. *Ibid.*

14. An agreement by a solicitor to take a gross sum from his client in lieu of costs is not void, though regarded by the Court with jealousy. *In re Whitcombe.* vol. 8, p. 140

15. A solicitor took an insufficient security for his client, and the nature of the transaction was such, as in the opinion of the Court to create a case of combined agency and trust. He was held (under the circumstances) personally responsible for the deficiency, and for the costs of suit. *Craig* v. *Watson.* vol. 8, p. 427

16. A solicitor acted for both parties in the matter of a voluntary settlement, which was set aside for undue influence. He was made a Defendant to the suit for that purpose. The Court, although exonerating him from culpability in the matter, made him bear his own costs, because he had not acted with proper prudence in the matter. *Harvey* v. *Mount.* vol. 8, p. 439

17. A solicitor employed in the sale of an estate knew that the title-deeds were in the possession of an adverse party; he however proceeded to prepare and obtained the execution of the conveyance and memorial. The sale went off, in consequence of the absence of the title-deeds. He was disallowed the costs of the proceeding, and the deed being a cloud on the title, he was also ordered to deliver it without being paid the costs thereof. *Potts* v. *Dutton.* vol. 8, p. 493

18. Duty of solicitors to check useless litigation. *Ottley* v. *Gilby.* vol. 8, p. 602

19. A solicitor acting for a third mortgagee, negotiated for a transfer of the first mortgage, and had proceeded so far as to send the drafts. He took a journey into the country to complete the matter, which proved fruitless, and having previously received an intimation that the second mortgagee had already obtained a transfer of the first mortgage, the costs of the journey were, on taxation, disallowed, on the ground that, after that intimation, he ought to have obtained his client's sanction before incurring the expense. *In re Price.* vol. 9, p. 234

20. In drawing up a decree, the word "inquiry" was erroneously inserted for the word "sale." It became necessary for the Defendant to make an application to correct the error. Held, that the solicitor of the Defendant must bear the costs. *In re Bolton.* vol. 9, p. 272

21. A solicitor, on payment of his costs, undertook to deliver his bill, but he neglected. On a petition presented more than twelve months after, the Court, under its general jurisdiction, ordered the delivery with costs. *In re Foljambe.* vol. 9, p. 402

22. An account settled, and a security taken by a solicitor from his client, though to be viewed with jealousy, is not to be treated as a nullity. *Jones* v. *Roberts.* vol. 9, p. 419

23. A solicitor taking a proceeding in a suit in the name of a person, without his authority, is personally liable to pay the costs, charges and expenses occasioned to the other parties thereby, and such a proceeding having taken place in the Master's office, the Court, on the petition of the parties injured, ordered the costs, &c. to be taxed and paid by the solicitor. *Malins* v. *Greenway.* vol. 10, p. 564

24. An order of course requiring a solicitor to deliver his bill of costs within fourteen days, not being obeyed, the next order is, that he may deliver it within four days or stand committed. *In re Baxter.* vol. 11, p. 37

25. Observations on the unsatisfactory mode of remunerating solicitors. *Stephens* v. *Lord Newborough*. vol. 11, p. 403

26. *A. B.*, a solicitor, agreed to act for *C. D.*, another solicitor, in his personal business on the terms of principal and agent. *C. D.* neglected to take out his certificate during part of the time. Held, that the agreement was not invalid, and an order of course to tax was sustained. *Ex parte Foley; In re Smith.* vol. 11, p. 456

27. *A.* purchased an estate from *B.*, and on the completion, one solicitor acted for both parties, and the purchase-money was paid into his hands. Afterwards the purchaser was defeated by *C.*, who had a paramount mortgage. The purchaser presented a petition against the solicitor, asking payment by the solicitor out of the purchase-money of the losses occasioned, or that he might indemnify the petitioner. The petition was dismissed with costs, the Court holding, first, that it had no jurisdiction to award compensation or damages in such a case; and secondly, that the money having come to the hands of the solicitor as agent of the vendor, and not of the petitioner, it could not interfere. *Tylee* v. *Webb; In re Hinton.* vol. 14, p. 14

28. As to the summary jurisdiction of the Court over solicitors, where moneys are paid to them by clients in that character. *Ibid.*

29. A married woman, to whom a sum of money was payable for her separate use, received a cheque from the Accountant-General, and handed it over to her solicitor who accompanied her. The solicitor was on motion ordered to pay the balance to his client, and held, that the *onus* being on the solicitor to shew cause for not paying it over, he could not set up a voluntary agreement to pay her husband's debt out of it. *Mawhood* v. *Milbanke.* vol. 15, p. 86

30. Solicitor, from whom a sum was found due, ordered to pay all the costs of proceedings to compel payment. *Re Dufaur and Blakeney.* vol. 16, p. 113

31. A solicitor having changed his name, a corresponding variation was ordered to be made on the roll of solicitors. *Re Matthews.* vol. 16, p. 245

32. A country solicitor who is authorized to institute a suit, is justified in employing a London agent for that purpose, in whose name, as agent, the bill may be filed. *Solley* v. *Wood.* vol. 16, p. 370

33. An agreement, pending a litigation, that a solicitor shall be entitled to compound interest on his demand, cannot be supported. *In re Moss.* vol. 17, p. 346

34. The settlement of a solicitor's bill by the client for a fixed sum is valid, and will not be disturbed by the Court, when it has been entered into fairly, and with proper knowledge on both sides. *Stedman* v. *Collett.* vol. 17, p. 608

35. A solicitor who had been struck off the roll for misconduct restored, after a lapse of ten years, during which, amidst great privation and suffering, he had maintained an irreproachable character, the application being supported by a memorial signed by a very large number of solicitors and unopposed by the Law Institution, and opposed by one individual solicitor only. *Anonymous.* vol. 17, p. 475

36. A solicitor who has received and has in his hands the money of his client will be summarily ordered to pay over the amount. A solicitor received moneys for his client, an administratrix. Held, that he could not set up proceedings by the next of kin, of whose rights he had notice, as a defence for not paying the administratrix. *Re Becke.* vol. 18, p. 462

37. In the course of a protracted litigation *B.* had become indebted to his solicitor in 9,377*l.* (as was alleged), of which 4,696*l.* had been paid out of pocket. The solicitor agreed to accept 3,500*l.* in full for his costs, unless the client recovered the estate, in which case the client agreed to pay the full sum of 9,377*l.* The client did not dispute the validity of the agreement until seven years after, when the litigation had been successful. The Court upheld the agreement. *Moss* v. *Bainbrigge; Bainbrigge* v. *Moss.* vol. 18, p. 478

38. A client signed an agreement, by which he charged his estate with the bill of costs due to his solicitor, with lawful interest, on the principle of annual rests. Held, first, that it was voluntary; and secondly, that having regard to the fiduciary relation between the parties, it could not be maintained. *Ibid.*

39. By an order for taxation, the solicitor was ordered, on payment, to deliver over the papers. Having made default, he was ordered to pay the costs of a motion to compel him, though he had delivered them up after the notice of motion but before it had been heard. *Re Minter.* vol. 19, p. 33

40. A client, when he retained a solicitor, expressed himself dissatisfied with the usual mode of remunerating solicitors, but no definite arrangement was made as to any other mode of remuneration. Subsequently the solicitor, in a letter to the client, stated that "until I have the pleasure of seeing you and of finally making some general and well understood arrangement with you on the subject of costs, it shall be understood on my part, that, beyond costs out of pocket,

I have no claim upon you personally." No arrangement was ever made, though the subject was often alluded to by the solicitor. Held, that this did not amount to a concluded agreement by the solicitor to claim nothing as of right but costs out of pocket. *Wilson* v. *Emmett.* vol. 19, p. 233

40*. Solicitors are neither admitted nor restored to the roll in Chancery, until they have been admitted or restored as attorneys in a Common Law Court. *In re Barber.* vol. 19, p. 378

41. The Plaintiff, a solicitor, obtained from his client securities on his real estate, whilst he wilfully obstructed the Defendant (the former solicitor) in obtaining a final order for payment of his taxed costs, which would have enabled him to obtain a charge under the 1 & 2 *Vict.* c. 110. The Court held, that the Plaintiff was nevertheless entitled to the benefit of his securities. *Shaw* v. *Neale.* vol. 20, p. 157

42. On payment of a solicitor's bill, the client is entitled to the possession of letters written to the solicitor by third parties, but not to copies of letters written by the solicitor to third parties, unless they are paid for by the client. *In re Thomson.* vol. 20, p. 545

43. An order was made upon a solicitor for the delivery of his bill within fourteen days. He was unable to comply, and on a motion for the second order, he asked for further time. It was given, but he was ordered to pay the costs of the motion. *In re Dendy.* vol. 21, p. 565

44. The solicitor usually charges for drawing the conditions of sale, though they are really drawn by Counsel, and he is thereby remunerated for the trouble of answering Counsel's queries. vol. 21, p. 40

45. *A. B.*, a solicitor, who was the only person who acted professionally in the trust, induced his co-trustee, who was his client, improperly to sell out the trust fund, which was received by *A. B.* and applied to his own use. On the application of one of the *cestuis que trust*, the solicitor was struck off the rolls. *In re Chandler.* vol. 22, p. 253

46. *A. B.* made an irrevocable voluntary settlement of his estate in favour, amongst others, of a relative who acted as his solicitor. The Court considered that *A. B.* intended to reserve a power of revocation, but that the deed was in other respects unobjectionable. *A. B.* made his will, prepared by the same solicitor, making a general devise, but not revoking the settlement. The Court then held, that it was the duty of the solicitor, when he prepared the will, specifically to have asked the testator whether he intended to revoke the deed, and not having done so, and it appearing to have been the intention of the testator that the estate should pass to his devisees, the Court decided, that although the deed would have been operative if *A. B.* had died intestate, yet that in the events which had happened, and as against all persons claiming under the settlement, the estate was subject to the trusts of the general devise contained in the will. *Nanney* v. *Williams.* vol. 22, p. 452

47. An attorney has not, by virtue of his office, an implied authority to compromise an action; but a client may become bound by a compromise entered into by his attorney without his authority, by not repudiating it within a reasonable time. *Swinfen* v. *Swinfen.* vol. 24, p. 549

48. At the trial of an issue counsel agreed upon terms of compromise, and it was made a rule of the Court of Common Law. The compromise was unauthorized by the Plaintiff, and effected without the instructions of his attorney. There being no subsequent acquiescence, a bill by the Defendant in the action, for specific performance of the compromise, was dismissed. *Ibid.*

49. The Defendant's solicitor died, and the Plaintiff (being unable to find the Defendant) could not proceed in the accounts directed by the decree. The Court ordered substituted service of a subpœna to name a new solicitor, and the Defendant having failed to appoint one, the Court directed the accounts to be taken in his absence. *Dean* v. *Lethbridge.* vol. 26, p. 397

50. A solicitor is accountable to his clients for the benefits which he may have derived clandestinely in transactions in which he was professionally engaged. *The Bank of London* v. *Tyrrell.* vol. 27, p. 273

51. A solicitor was active in founding a banking company. Before its establishment he entered into a secret arrangement with a stranger, that the latter should purchase some property eligible for the banking-house on a joint speculation. After its establishment the company purchased part of the premises for their banking-house, not knowing that their solicitor was interested in it. Held, that the solicitor must account to the company for all the profit made by him by the whole transaction; but that the stranger was under no such liability. *Ibid.*

52. The Respondent (a solicitor) was appointed a member of a committee of a company, with power to compromise two suits. He, with the approbation of his co-committee, compromised them and received the money. A summary application that he might pay over the money or be struck off the rolls was refused with costs. *Re Harvey.* vol. 27, p. 330

53. To a bill against a trustee and his solicitor, alleging that trust moneys had been improperly paid to the solicitor for costs, a demurrer of the solicitor was allowed, he being a mere agent, and the matter complained of being one merely of account as between the trustee and *cestui que trust*. *Maw* v. *Pearson*. vol. 28, p. 196

54. Gift by a client to a solicitor while that relation subsisted between them declared invalid at the instance of the residuary legatees of the donor; but legacies to the solicitor, his wife and children, supported. The principles which govern such cases stated. *Walker* v. *Smith*. vol. 29, p. 394

55. A Receiver was appointed by the Court, upon the representation of the Plaintiff's solicitor that the Receiver had entered into the usual recognizances, which he had not in fact done. A loss occurred, in consequence of the Receiver's liability being only in the nature of a simple contract debt. The solicitor was, at the instance of a Defendant, made personally liable for the loss occasioned by his neglect. Held also, that the country solicitor was liable, though the representations were made by his *London* agents. *Simmons* v. *Rose*; *Weeks* v. *Ward*; *Re R. A. Ward*. vol. 31, p. 1

56. A solicitor, who had ceased to take out his certificate in 1853, with the intention of being called to the Bar, which he had abandoned, was allowed to renew his certificate without undergoing an examination. *Re Sewell*. vol. 32, p. 475

57. A solicitor, who, by a slip, neglected to produce his certificate to the registrar within a month, as required by the 23 & 24 *Vict*. c. 127, s. 21, relieved from the consequences, and it was ordered that the certificate should have effect from the time of stamping the same. *Re Smith*. vol. 33, p. 248

58. A solicitor of a mortgagor ordered, upon petition, to deliver to a mortgagee a copy of his bill of costs, in pursuance to his undertaking. *Re Bailey*. vol. 34, p. 392

59. A solicitor, on the sole retainer of the debtor, prepared a creditors' deed, the first trust of which was to pay the costs of its preparation. The trustees acted and employed the same solicitor in the trust. Held, upon a taxation between the solicitor and the trustees, that the solicitor was entitled to charge the costs of preparing the deed, though he had not been retained by the trustees for that purpose. *Re Sadd*. vol. 34, p. 650

60. Though this Court holds that it is highly improper for a solicitor to derive a personal advantage in the shape of gifts from his clients, or in the shape of the liquidation of his bills untaxed and undelivered, still the Court cannot approve of clients entering into transactions with their solicitor, whereby they obtain from him present relief, and at the same time indulge the expectation that the Court will afterwards, at their instance, annul the whole transaction on the ground of the relation subsisting between them. *Re Sadd*. vol. 34, p. 650

61. A solicitor paying off a mortgage on his client's estate is considered as acting as his agent. *Ward* v. *Carttar*. vol. 35, p. 171

62. Transactions between solicitor and client, by which the former obtained gifts, and an undue advantage, set aside and the securities ordered to stand good only to the extent of what might be found justly due to the solicitor. *Gardener* v. *Ennor*; *Hamby* v. *Moody*. vol. 35, p. 549

63. Deed between husband and wife improperly obtained from the husband, through the wife's solicitor, who took a benefit under it, set aside, with costs, to be paid by such solicitor. *Proctor* v. *Robinson*. vol. 35, p. 329

SOLICITOR (DISCHARGE).

1. After demurrer allowed, the Plaintiff's solicitor refused to proceed until payment of his bill. Held, that he was bound to deliver over the papers to the new solicitor of the Plaintiff on the usual undertaking as to lien and redelivery, but that the party ought, under the circumstances, to undertake to prosecute the suit with due diligence. *Cane* v. *Martin*. vol. 2, p. 584

2. Agent of a solicitor held, by the irregularity of his conduct, to have discharged himself, and ordered, before taxation or payment of his bills, to deliver up all papers, &c. on an undertaking of the principal to redeliver them as the Court should order. *In re Smith*. vol. 4, p. 309

3. On the application of Defendant's counsel, a motion stood over. When it came on again, it appeared that the Defendant had since changed his solicitor, but without order, and no counsel then appeared for him. The motion was granted on an affidavit of service. *Davidson* v. *Leslie*. vol. 9, p. 104

4. A party had some time since left home, and had not been heard of, and it was not known whether he was living or dead. His solicitor ceased to act for him, but no order had been made for changing solicitors. Held, that notices served on such solicitor were regular. *Wright* v. *King*. vol. 9, p. 161

5. By an order of the Court, the costs to be incurred by a married woman suing by her next friend in a future proceeding, were ordered to be paid to *A. B.*, her

solicitor. Pending the proceedings *A. B.* was discharged, and *C. D.* appointed solicitor. *A. B.* received the whole costs. Held, that the Court had jurisdiction, on petition, to order *A. B.* to pay over to *C. D.* his share of such costs. *Ex parte Bailey and Hope; In re Barnard.* vol. 14, p. 18

6. A country solicitor agreed to employ a town agent for fifteen years. Before the expiration of the term, he obtained an order of course, in a suit, to change the agent, suppressing the existence of the special contract. The order was discharged for irregularity, with costs. *Richards* v. *The Scarborough Market Company.* vol. 17, p. 83
7. A dispute having arisen as to the mode and extent of a solicitor's remuneration, he refused to proceed in the cause until it had been settled. The solicitor was ordered to deliver up the papers in the cause to the new solicitor, upon his undertaking to proceed with due diligence and to hold them subject to the existing lien thereon. *Wilson* v. *Emmett.* vol. 19, p. 233
8. A solicitor was also a partner in a mercantile firm, which became bankrupt. Held, that the bankruptcy of the mercantile firm operated as a discharge of the solicitor's clients, so as to entitle them to the delivery of their papers, upon terms, before the satisfaction of the lien. *In re Moss.* vol. 35, p. 526

SOLICITOR'S LIEN.

1. Costs receivable and payable by two parties, ordered to be mutually set off, without regard to the lien of the solicitors. *Cattell* v. *Simons.* vol. 6, p. 304
2. A mortgagor who had borrowed the title-deeds from an equitable mortgagee, to enable him to sell the property, handed them to his solicitor, in order to complete. The mortgagee acquiesced in the sale. Held, that the solicitor had a lien on the deeds for his costs of the transaction only, but not for his other claims for costs against the mortgagor. *Young* v. *English.* vol. 7, p. 10
3. Lien of a solicitor upon a fund in Court for his costs of suit, protected by a stop order. *Hobson* v. *Shearwood.* vol. 8, p. 486
4. No effective proceedings could be taken in a suit, in consequence of the contempt of two Defendants. Held, that the Plaintiff's solicitor was entitled to a taxation of his costs, and to a stop order on the funds. *Ibid.*
5. A solicitor's lien upon the fund is not a general lien. It extends only to costs in the cause, and costs immediately connected with costs in the cause; as, for instance, the costs of successfully protecting a solicitor's right to the costs in a cause. *Lucas* v. *Peacock.* vol. 9, p. 177
6. An order of course to tax directed, that, on payment, all the papers, &c. of the client should be delivered up. The solicitor claimed a special lien on some of the papers beyond the costs. A motion to discharge the order was refused, because, if the solicitor had such special lien, he would be protected when application was made to the Court, for the delivery of the papers. *In re Teague.* vol. 11, p. 318
7. A solicitor had no lien for his costs upon real estates recovered by him for his client. *Shaw* v. *Neale.* vol. 20, p. 157
8. A person can only give a lien on deeds as against himself and to the extent of his own interest. *Turner* v. *Letts.* vol. 20, p. 185
9. A suit was instituted by persons entitled in remainder against the executrix (who was also the tenant for life) for the administration of the estate. The executrix died pending the suit, and her solicitor claimed a lien for his costs on deeds relating to leaseholds which had been placed in his hands by the executrix. The Master of the Rolls was of opinion that, independently of the suit, the executrix could give no lien as against those in remainder for costs for which she was personally liable, and that, in the suit, the costs had been lost by the abatement, and therefore that no lien existed. But the Lords Justices considered, that the solicitor's lien depended on whether the executrix was or not indebted to the estate, and they put this in a train of investigation. *Ibid.*
10. The lien of a solicitor on documents does not relieve him from the necessity of producing them for the purposes of evidence at the instance of third parties. *Hope* v. *Liddell.* vol. 20, p. 438
11. Solicitors employed by the husband to prepare a marriage settlement: Held, not bound to produce it to the trustees until their bill had been paid. *Re Gregson.* vol. 26, p. 87
12. A solicitor received from his client a sum of money to pay off a mortgage. He did not so apply it, but claimed a lien on it for his costs. He was summarily ordered to repay the amount to his client, but without interest. *Re Cullen.* vol. 27, p. 51
13. A solicitor, in custody for debt, being by the 6 & 7 *Vict.* c. 73, s. 31, incapacitated from practising, was ordered to deliver up his client's papers in pending suits, without payment of his costs, but to be held subject to his lien. *Re Williams.* vol. 28, p. 465
14. The lien of a solicitor for his costs on

a fund recovered by his exertions, cannot be affected by an assignment of the fund by the client, nor by a stop order obtained by the assignee. *Haymes* v. *Cooper*; *Cooper* v. *Jenkins*.
vol. 33, p. 431

15. *A. B.* was a partner in a mercantile firm, and was also a partner in a firm of solicitors. The mercantile firm alone were made bankrupt. Held, that their assignees were not entitled to the delivery to them, by the firm of solicitors, of the papers of the mercantile firm, until their lien on them had been satisfied. *In re Moss*. vol. 35, p. 526

SPECIAL CASE.

1. A party to a special case died after it had been set down; liberty was given to amend, by making his representatives parties. *Ainsworth* v. *Alman*.
vol. 14, p. 597
2. On a special case, the costs follow the same rule as in administration suits, and are payable out of the general residue; and if there be none, out of the property specifically bequeathed. *Cookson* v. *Bingham*. vol. 17, p. 262
3. Where all persons beneficially interested are parties to a special case, the trustees ought to be omitted. *Darby* v. *Darby*.
vol. 18, p. 412
4. The affidavit in support of an application for an order to appoint a guardian to concur, on behalf of an infant, in a special case under Sir *G. Turner's* Act, ought to be intituled "In the matter of the act" and "In the matter of the infant," and not "In the special case." *Star* v. *Newbery*. vol. 20, p. 14
5. Costs of a special case held payable by the Defendant. *Sabin* v. *Heape*.
vol. 27, p. 553
6. The 51st section of the 15 & 16 *Vict.* c. 86, held applicable to special cases. *In re Brown*. vol. 29, p. 401
7. *A. B.*, who was out of the jurisdiction, was interested in a question arising on a special case. There being other parties having an interest identical with that of *A. B.*, the Court authorized the omission of *A. B.*'s name in the special case. *Ibid.*

SPECIALTY DEBT.

A debtor by simple contract executed a deed, in which he admitted the amount of his debt and secured it by an assignment of property to his creditor. The deed contained no covenant or agreement to pay. Held, that this deed did not make the debt a specialty. *Marryat* v. *Marryat*. vol. 28, p. 224

SPECIFIC LEGACY.

1. Held, that a gift to *A. B.* "of the sum of 100*l.*, which said sum is owing to me, by bond, from her father," was a specific and not a demonstrative legacy. *Davies* v. *Morgan*. vol. 1, p. 405
2. A testator bequeathed as many of his canal shares as he should leave children him surviving, one of such shares to be in trust for each of his children. At the date of his will he had eight shares and seven children, and at his death he had ten shares and eleven children. Held, that the bequest was specific. *Miller* v. *Little*. vol. 2, p. 259
3. A testator having fifteen and a half *Leeds* and *Liverpool* canal shares, which by Act of Parliament were to be deemed personal estate, bequeathed five-and-a-half such canal shares to *A.*, five such shares to *B.*, and five such shares to *C.* There was no description or reference in the will to shew that the testator intended to give the particular shares which he held at the date of his will. At his death he possessed no *Leeds* and *Liverpool* canal shares. Held, that the legacies were general, and not specific.
A canal was made under the authority of an Act of Parliament, the lands for that purpose were purchased and vested in a corporation, but the shares therein were to be deemed to be personal estate and transmissible as such, and were to be conveyed by bargain and sale. Held, that the shares did not bear the character of realty, so as to make a bequest of them specific. *Robinson* v. *Addison*.
vol. 2, p. 515
4. A testator bequeathed to *A. B.* all his ships and money due to him at the time of his decease. Held, that freight earned by a ship under a charterparty executed after the date of the will and in respect of a voyage not completed until after the testator's death, did not pass to *A. B.* either as "money due," or as incident to the ship. *Stephenson* v. *Dowson*.
vol. 3, p. 342
5. Testator bequeathed the dividends, &c. of all stocks he should be entitled to at the time of his decease, in the public funds. He had 10,000*l.* Consols at his death. Held, that this was a specific bequest of that sum. *Ibid.*
6. Bequest of a specific sum in the funds, to be paid within twelve months. The sum was not transferred within the twelve months, and the executors received the dividends accruing during that period. Held, that they belonged to the legatee. *Bristow* v. *Bristow*. vol. 5, p. 289
7. Where a testator, having given a general legacy, by a subsequent instrument makes it specific, the ademption of the specific legacy, without more, will not set up the

general legacy. *Marquis of Hertford* v. *Lord Lowther* (*Countess Berchtoldt's case*). vol. 7, p. 107

8. A testator bequeathed to his daughter his twenty shares in the *S.* office, or in any other office in which the same had been or should be transferred, and all his right therein, or in the moneys arising or that might arise from the sale thereof. Negotiations, of which the testator was aware, were then pending, for the transfer of the business of the *S.* office to the *A.* office, which were afterwards concluded, and, in lieu of the *S.* shares, the testator received a number of *A.* shares and a sum of 1,200*l.* Held, that the *A.* shares passed under the bequest, but that the money did not. *Phillips* v. *Turner*. vol. 17, p. 194

9. Distinction between the cases in which specific legatees of shares take *cum onere*, and those in which the general personal estate of the testator is liable to pay the future calls for the benefit of the legatees. *Armstrong* v. *Burnet*. vol. 20, p. 424

10. Where the interest of the testator in the subject-matter which he professes to bequeath is complete, or where it is so treated and considered by him and by all persons connected with it, the future calls fall on the legatees and not on the general personal estate. But where further payments are required to make perfect the interest which the testator professes specifically to bequeath, then the general personal estate is applicable for that purpose. *Ibid.*

11. A banking company was established in 1836. By the deed of settlement 5*l.* per share was payable immediately, and the directors were empowered, at any time, to make a further call of 5*l.*, and on non-payment the shares might be forfeited. The shares were transferable, and, on transfer, the former proprietor was released. Legatees and executors might sell, but were not to be members until a transfer to them, and until then were not entitled to the current dividends. The shareholders thereby covenanted to observe the clauses of the deed. A shareholder died in 1843, having specifically bequeathed his shares to infants. The executors, in 1845, transferred the shares into their own names, and they assented to the legacies. Afterwards, in 1848, the further call of 5*l.* per share was made. Held, that it was payable by the legatees and not out of the testator's residuary estate. *Ibid.*

12. Bequest of "all my Bank Stock and foreign securities as invested by Mr. *A.*, stockbroker." Held to pass Three-and-a-quarter Cents., the testator not having, at the date of his will or at his death, any other stock to answer this description. Held also, to pass foreign securities purchased after the date of the will by Mr. *B.* *Drake* v. *Martin*. vol. 23, p. 89

13. Bequest of "my property not in *England*, in the hands of my attorney abroad, Mr. *W.*, consisting of *R.* bonds, &c." Held to pass all property abroad. *Ibid.*

14. Bequest of specific chattels, in trust to sell, "in the first place" to pay the debts, and then to divide the residue amongst five persons. There was no residuary gift. Held, that the debts were primarily payable out of the general residue. *Newbegin* v. *Bell*. vol. 23, p. 386

15. Bequest of legacies to be transferred by the executors "either in Three per Cent. Consols or Three per Cent. Reduced Stock standing in the testator's name," within twelve months after his decease. The transfer was made after the twelve months. Held, that, notwithstanding the discretion, the legacies were specific, and that the legatees were entitled to all the dividends accruing thereon subsequent to the testator's death. *Chester* v. *Urwick*. (No. 1.) vol. 23, p. 402

16. A married woman died in 1849 possessed of savings of her separate estate, amounting to 697*l.*, and having power of appointment over 21,000*l.* Consols, subject to her husband's life interest. By her will she directed, "first," that all her debts should be paid, and she then specifically bequeathed all her ready money. Her debts were paid out of the 697*l.* Held, on the death of her husband, in 1855, that the specific legatee was entitled to be repaid the 697*l.* out of the fund over which she had a power of appointment. *Laing* v. *Cowan*. vol. 24, p. 112

17. In *June* a testator directed his bankers to purchase 1127 francs French Rentes for him. They entered the purchase in their books, but never transferred the amount into the testator's name; they had, however, sufficient Rentes to answer it, which they considered they held for the testator. In *July* following, the the testator bequeathed "the annual rente of 1127 francs, inscribed in his name in the book of the public debt of *France*," to *A. B.* Held, that *A. B.* was entitled to 1127 Rentes, although the testator had none in his name, and although, on the balance of previous transactions in Rentes with his banker, he was entitled only to 708 francs in Rentes. *Ellis* v. *Eden*. (No. 2.) vol. 25, p. 482

18. A testator bequeathed a debt of 4,000*l.* due from his brother to trustees for his life, and he gave 1,000*l.*, part of the said sum of 4,000*l.*, to *A.*; 2,000*l.*, other part of the said sum of 4,000*l.*, to *B.*; and as to the sum of 1,000*l.*, being the re-

mainder of the said sum of 4,000*l.*, to sink into his general estate. He directed that if his estate should be deficient, the legacies should abate proportionably; and if it should be more than sufficient to satisfy the legatees, the legacies should be increased proportionably. At the testator's death, 2,120*l.* only remained due:—Held, that the legacies of 2,000*l.* and 1,000*l.* were specific, and ought to abate; secondly, that *A.* and *B.* were not entitled to have the whole 2,120*l.* applied rateably in satisfaction *pro tanto* of their legacies; but that a rateable proportion of the sum of 2,120*l.* ought to be attributed to the 1,000*l.* directed to sink into the residue: thirdly, that the legacies of 2,000*l.* and 1,000*l.* ought to be increased out of the surplus of the testator's estate, in proportion to the reduced amounts payable in respect of such legacies after the abatement. *Duncan* v. *Duncan.*
vol. 27, p. 386

19. A testator bequeathed, specifically, all the money in the public funds "which he might be possessed of or entitled to at the time of his decease." He subsequently directed his country brokers to invest 5,000*l.* in Consols. They debited his account with the amount, and sent instructions to their broker to make the purchase, but no contract was entered into by the broker until five hours after the testator's death. Held, that the additional stock did not pass by the specific bequest, but fell into the residue. *Thomas* v. *Thomas.* vol. 27, p. 537

20. A testatrix bequeathed to *A. B.* "the sum of 2,000*l.* Long Annuities standing in my name in the books of the Governor and Company of the *Bank of England.*" Held, that this was a specific legacy, payable out of the Long Annuities and not out of the general assets, and the testatrix not possessing, at the date of her will or her death, sufficient to pay the legacy, that it failed to the extent of the deficiency. *Gordon* v. *Duff; In re Ward.*
vol. 28, p. 519

21. A widow, being entitled to one-third of her husband's personal estate, took out administration, and having sold out a sum of stock belonging to him, she reinvested the produce, with a small addition, in another stock in her own name. By her will, she bequeathed to her younger son all her share in the personal property of her husband, to which she became entitled at his decease. Held, that the stock passed as a specific bequest to the legatee. *Moore* v. *Moore.*
vol. 29, p. 496

22. Under a bequest of "household furniture," "plate," "china," and "other household effects:" Held, that gold, silver and china snuff-boxes, used for the purposes of ornament about the mansion, passed to the legatee. Held also, that cabinets for china, which had been ordered by the testator, but had not been delivered at his death, also passed under these words. *Field* v. *Peckett.* (No. 2.) vol. 29, p. 573

23. A testatrix bequeathed a large amount of "stock" legacies, declaring that by the word "stock" she meant government stocks, or stock or shares in public companies, to which she might be entitled. She had various such stocks and shares. Held, that the gifts were specific, and that the legatees were entitled to a proportionate share of each of such stocks and shares. *Measure* v. *Carleton.*
vol. 30, p. 538

24. Since the Wills Act (1 *Vict.* c. 26), the residuary devised real estate of a testator, held applicable towards the payment of the testator's debts before his specifically devised real and his specifically bequeathed personal estate. *Bethell* v. *Green.* vol. 34, p. 302

25. A testatrix, by her will, bequeathed both general and specific legacies, and she willed that, in case of her personal estate proving insufficient for the payment of her legacies, then the deficiency should be made up out of her real estate. By a codicil, she gave "all my personal estate to *A. C. M.*" Held, that *A. C. M.* took the whole personal estate discharged of the legacies; and secondly, that the general legacies still remained charged on the real estate, but that the specific legacies did not, and therefore failed. *Kermode* v. *Macdonald.*
vol. 35, p. 607

SPECIFIC PERFORMANCE.

[*See* DAMAGES, DELAY, GOODWILL, PART PERFORMANCE, RESCINDING CONTRACT, SPECIFIC PERFORMANCE (COSTS), SPECIFIC PERFORMANCE (REFERENCE AS TO TITLE), SPECIFIC PERFORMANCE WITH VARIATION, TIME OF ESSENCE, UNCERTAINTY, VENDOR AND PURCHASER.]

1. *A.*, being entitled to an undivided moiety of a piece of ground, agreed with *B.* that, in case either of them should at any time purchase the other moiety, the whole should be divided in a particular manner between them; the moiety was sold to a third party, whereupon *A.* and *B.* further agreed that neither of them would purchase that moiety until they had agreed upon a sum to be given for it, subject to the stipulations and conditions of the former agreement. *A.* afterwards refused to agree upon the price to be given, and *B.* having purchased the moiety of the property, *A.* refused to carry the agreement into effect. Held,

that *A.* was not justified in refusing to fix a price. *Morris* v. *Timmins.* vol. 1, p. 411

2. In consideration of 100*l.* paid by the Plaintiff's father to *A. B.*, the latter covenanted to maintain and apprentice the Plaintiff, and that he should take a specified interest in all the real and personal estate which *A. B.* should possess at his death; the condition in life of the Plaintiff not having been altered, and no expectation on his part having been defeated: Held, that this contract might be put an end to by agreement between the Plaintiff's father and *A. B.*

Semble, that if there had been part performance of the agreement altering the condition in life of the Plaintiff, then the Court would not have permitted the father to take him back to his prejudice, and would have compelled a complete performance in his favour. *Hill* v. *Gomme.* vol. 1, p. 540

3. An estate was settled to the husband and wife successively for life, with remainder to their children as they should appoint, and in default of appointment between such children. The husband and wife encumbered their life interests, and in *August* the husband and wife, having seven children, appointed the whole estate to the eldest daughter; in *October* of the same year the husband, wife and daughter mortgaged the property for 8,000*l.* The mortgagee, under the power of sale in the mortgage deed, sold the property to the Plaintiff; and after the title had been approved of, one of the younger children gave notice to the Plaintiff not to complete, and that the appointment was a fraud on the marriage settlement, and also cautioning the purchaser not to pay the purchase-money; he did not, however, follow up the notice by any proceeding. Held, that notwithstanding this, a good title was shewn, and that the purchaser must complete. *Green* v. *Pulsford.* vol. 2, p. 70

4. Remedy by supplemental bill, after a decree for specific performance, for the damages occasioned to the Plaintiff by the abstraction by the Defendant, *pendente lite*, of part of the subject-matter of the suit. *Nelson* v. *Bridges.* vol. 2, p. 239

5. *A. B.*, an attorney, representing himself to be authorized by the owners, entered into an agreement on their behalf, to sell a house to the Plaintiff, and received a deposit. The Plaintiff filed a bill against the owners and *A. B.*, praying a specific performance, and in the alternative, that if the agreement could not be enforced against the owners, then that *A. B.* might repay the deposit and the costs incurred by the Plaintiff and of the suit. It appeared at the hearing that *A. B.* had no authority to sell. Held, that the remedy of the Plaintiff against *A. B.* being altogether at law could not be had in this suit, and the bill was dismissed with costs. *Sainsbury* v. *Jones.* vol. 2, p. 462

6. Assignees of a bankrupt agreed to sell a part of his estate, and filed a bill for specific performance. It turned out that the estate was vested in assignees under a previous insolvency. After the Master had made his report, upon a reference as to title, the assignees in insolvency offered to concur in the sale. Held, that a good title could be made. *Sidebotham* v. *Barrington.* vol. 4, p. 110

7. The Court will not enforce a contract involving a breach of trust. *Wood* v. *Richardson.* vol. 4, p. 174

8. The owner of an estate took the benefit of the Insolvent Act, and afterwards became bankrupt. The assignees in bankruptcy, without communicating with the assignees of the insolvency, in whom the estate was vested, sold it. Pending a suit instituted by the vendors for a specific performance, the assignees of insolvency affirmed the sale. A specific performance was decreed. *Sidebotham* v. *Barrington.* vol. 5, p. 261

9. A tenant in possession purchased the property, which was represented to be forty-six feet in depth; it turned out to be thirty-three only. Held, that he was entitled to an abatement. *King* v. *Wilson.* vol. 6, p. 124

10. A trustee entered into a contract for the sale of trust property, and it was agreed that the purchaser should, out of the purchase-money, retain a private debt due to him from the trustee. On a bill by the trustee: Held, that this Court would not decree the specific performance of such a contract. *Thompson* v. *Blackstone.* vol. 6, p. 470

11. In cases of specific performance, courts of equity exercise a discretion. In cases of great hardship they will not interfere, but will leave the Plaintiff to his remedy by recovery of damages at law. *Wedgwood* v. *Adams.* vol. 6, p. 600

12. *A.* contracted to sell a wharf on the banks of the *Thames*, with a jetty. The jetty turned out to be liable to be removed by the corporation of *London*, if they thought fit. Held, that the jetty was essential to the beneficial occupation and enjoyment of the premises contracted to be sold, and that a specific performance could not be decreed. *Peers* v. *Lambert.* vol. 7, p. 546

13. Where a bill for specific performance is filed by a purchaser, and it turns out that the vendor cannot make a good title, the bill is dismissed, but without costs. *Malden* v. *Fyson.* vol. 9, p. 347

14. A railway company about to sever the Plaintiff's land by their railroad, agreed to purchase the necessary portion of

land, "subject to the making such roads, ways, and slips for cattle as might be necessary." Held, that although it was difficult to execute an agreement thus expressed, yet that the Plaintiff was entitled to a specific performance:—that the word "necessary" must receive a reasonable interpretation; the expression was held to mean "such roads, ways, and slips for cattle as might be necessary and proper for convenient communication between the several portions of the Plaintiff's land," and a reference was therefore directed to ascertain what was necessary and proper. *Sanderson* v. *The Cockermouth and Workington Railway Company.* vol. 11, p. 497

15. The Commissioners of Woods and Forests are not, under the 7 *Geo.* 4, c. 77, entitled to sue or liable to be sued for the specific performance of contracts for leases entered into with and by them. *Nurse* v. *Lord Seymour.* vol. 13, p. 254

16. Courts of Equity will not lend their assistance to enforce the specific performance of ordinary contracts for the sale and purchase of chattels, unless there be something very special in the nature of the contract. On the other hand, if a trust be created, the circumstance that the subject-matter is a personal chattel will not prevent this Court from enforcing the due execution of the trust. *Pooley* v. *Budd.* vol. 14, p. 34

17. A railway company contracted to purchase land for making the line, but they afterwards abandoned the undertaking, and allowed their compulsory powers to expire. Held, that the hardship of forcing them to take land which would be useless to them, was no reason why specific performance should not be decreed. *Lord James Stuart* v. *The London and North-Western Railway Company.* vol. 15, p. 513

18. The Defendant agreed, in writing, to take shares in a joint-stock company (which were transferable), "and to execute the deed of settlement when required." Specific performance was refused. *The Sheffield Gas Consumers' Company (registered)* v. *Harrison.* vol. 17, p. 294

19. Specific performance of an under-lease refused, the intended lessee having, with notice, committed acts which would have been a forfeiture of the original lease. *Lewis* v. *Bond.* vol. 18, p. 85

20. The Court will not decree a specific performance which involves a breach of trust. *Shaw* v *Topham.* vol. 19, p. 576

20* A contract for the sale and purchase of an uncertain thing, the extent and value of which is understood to be unknown to both parties, is valid, and neither party can resist completing, merely because the reality has turned out to be different from what he anticipated. *Baxendale* v. *Seale.* vol. 19, p. 601

21. But where something different from what is claimed by the purchaser was intended to be sold by the vendor, this Court will not compel the latter specifically to perform the contract, which, in substance, though not in terms, is really different from that which was entered into. *Ibid.*

22. Where the terms of a contract are ambiguous, and by adopting the construction of the purchaser would compel the vendor to convey property not intended or believed by him to be included in the contract, this Court will not decree a specific performance. *Ibid.*

23. The Court will not decree the specific performance of a contract unless it can enforce the whole; but the difficulty seems to be removed where the part which it is impossible to enforce has already been performed. *Hope* v. *Hope.* vol. 22, p. 351

24. The Defendant agreed to purchase a property at a valuation to be made by *A. B.* The Court, though it considered *A. B.*'s valuation very high, "and perhaps exorbitant," decreed specific performance, there appearing neither "fraud, mistake nor miscarriage." *Collier* v. *Mason.* vol. 25, p. 200

25. *A.* agreed to grant a lease to *B.* as soon as *B.* should have built a house, with the necessary outbuildings on the land, of the value of 1,400*l.* at the least, "according to a plan to be submitted to and approved by *A.*" *B.* agreed to build and take the lease. No plan had been approved of. Held, that no decree could be made for specific performance, and a bill filed by *A.* for that purpose was dismissed with costs. *Brace* v. *Wehnert.* vol. 25, p. 348

26. A person contracting for the lease of a mine cannot resist its performance on the ground of his ignorance of mining matters, and of the mine turning out worthless. *Haywood* v. *Cope.* vol. 25, p. 140

27. Specific performance is a matter of discretion, to be exercised, however, according to fixed and settled rules, and the mere inadequacy of consideration is not a ground for exercising such discretion by refusing a specific performance. *Ibid.*

28. Directors having entered into a contract, *ultra vires*, and which was not binding on the company: Held, that it could be neither specifically performed, nor could the Court order them to make good their representations. *Ellis* v. *Colman*; *Bates* v. *Husler.* vol. 25, p. 662

29. A contract for the sale of land provided, that one party was to be consulted on any houses proposed to be built thereon by the other, and in case of difference, that *A.* and *B.*, or their nominees, should have

power to decide any such question. There having been no decision, held, that this Court could not specifically perform the contract. *Tillet* v. *The Charing Cross Bridge Company.* vol. 26, p. 419

30. A specific performance will not be decreed after a delay of ten years, when nothing has been done in the meantime. *Alloway* v. *Braine.* vol. 26, p. 575

31. A Court of Equity will not decree the specific performance of a contract to borrow a sum of money on mortgage. *Rogers* v. *Challis.* vol. 27, p. 175

32. A landlord had, in 1827, agreed to grant his tenant a lease, but none had been granted, though the tenant had been in possession. On a bill by the tenant for specific performance, the landlord set up, by way of defence, that the tenant had committed waste. The Court directed the lease to be executed and antedated, and the question of waste to be tried at law. *Poyntz* v. *Fortune.* vol. 27, p. 393

33. Decree to compel directors in a joint-stock company to take shares subscribed for by them, and which were transferable, refused. *Bluck* v. *Mallalue.* vol. 27, p. 398

34. Incumbent agreed to grant, at a future period, a lease of his glebe, containing about 437 acres, "except 37 acres thereof," which were not specified. Held, that the contract was not void for uncertainty, that the right of selecting belonged to the lessor, he having the first act to do; but that if a lease had actually been granted in the uncertain form of the contract, the right of selecting would then have belonged to the tenant. Held also, that this right of selection must not be exercised oppressively, so as to interfere with the beneficial enjoyment of the rest of the farm. *Jenkins* v. *Green.* (No. 1.) vol. 27, p. 437

35. An incumbent agreed to grant a farming lease of the glebe, at a rent payable half-yearly. The Enabling Statute (5 & 6 *Vict.* c. 27) requires the rent to be reserved quarterly. Held, first, that the Court would not compel the lessee to take a lease reserving the rent quarterly. Secondly, that the Court would not, in the face of the act, approve of a lease reserving the rent half-yearly; but, thirdly, that if a lease reserving the rent half-yearly had actually been executed by the bishop and patron, it would, in favour of the tenant, have been a perfectly valid lease under the fourth section. *Jenkins* v. *Green.* (No. 2.) vol. 27, p. 440

36. The Defendant entered into a contract to purchase leaseholds, after his solicitor had perused the leases. He intended to apply the property to a purpose which it turned out was prohibited by the lease. Held, that whether the vendor knew the purchaser's intention or not, the purchaser was bound specifically to perform his contract. *Morley* v. *Clavering.* vol. 29, p. 84

37. On a decree for specific performance of a contract to purchase a lease, the assignment was ordered to be antedated, so as to bear date on the day on which the contract ought to have been performed. *Ibid.*

38. Principles on which the Court proceeds in refusing specific performance in cases of mistake. *Swaisland* v. *Dearsley.* vol. 29, p. 430

39. When the description of the property sold is ambiguous, and the purchaser swears he made a mistake, and this is not disproved, the contract will not be enforced; but if there appear no ground, on the particulars, for the mistake, it is not sufficient for the purchaser to swear that he has made a mistake. *Ibid.*

40. An undivided moiety of a property was sold by auction, the rent of which was described as 16*l.*; but that was the rental of the whole and not of a moiety. The purchaser might have discovered this from the rest of the particulars: but having sworn that he had purchased, under a mistake that 16*l.* was the rental of a moiety, the Court refused to decree a specific performance against him. *Ibid.*

41. A solicitor contracted, in his own name, to purchase a freehold; he resisted the performance of it on the ground that he had acted as the mere agent of a client, and that, it being a case of hardship, damages at law would be an inadequate remedy to the vendor. Held, that he was bound to perform the contract. *Saxon* v. *Blake.* vol. 29, p. 438

42. The Defendant agreed to take a lease of a public-house, provided a retail licence should be obtained. The magistrates afterwards granted a written licence to sell excisable liquors and to permit them to be consumed on the premises, but they insisted on a verbal promise that no excisable liquors should be sold for consumption upon the premises. Held, that the Defendant was not bound to take the lease. *Modlen* v. *Snowball.* vol. 29, p. 641

43. After a decree for specific performance, and execution of the conveyance, the purchaser neglected to pay the purchase-money. The Court, on the application of the vendor, fixed a day and place for that purpose. *Morley* v. *Clavering.* vol. 30, p. 108

44. The Defendant agreed to enter into partnership with the Plaintiffs on a future day, and, on his failing to do so, to lend them 10,000*l.* for two years. He failed to do so. To a bill for specific performance of this agreement a general demurrer was allowed. *Sichel* v *Mosenthal.* vol. 30, p. 371

45. *A.* agreed to take from *B.* a lease of an unfinished house, containing covenants on the part of *A.* to repair and keep in repair. *B.* agreed to finish the house. The Court declined compelling *A.* to take the lease, the house having been finished in such a defective manner as to make it unreasonable. *Tildesley* v. *Clarkson.* vol. 30, p. 419

46. Properties held by several trustees under several trusts and for different persons were sold together, in one lot, for one undivided sum and with special conditions, as to part, limiting the title. Held, that the purchaser could not resist the specific performance of the contract on the ground of the mode in which the trust property had been sold. Held also, that the Court, if necessary, would apportion the purchase-money. *Rede* v. *Oakes.* vol. 32, p. 555

47. A Court of Equity will not decree the specific performance of a contract for the purchase of a lease, where, from pending and threatened litigation, it is impossible to ascertain to whom the ground-rent is payable, and the purchaser must be involved in immediate litigation. *Pegler* v. *White.* vol. 33, p. 403

48. The vendor of a real estate died before completion intestate as to his real estate. Held, that the legal personal representatives of the vendor might maintain a bill against the vendor's heir and the purchaser for a specific performance, and that although the interest of vendor was equitable and the purchaser had since got in the legal estate. *Hoddel* v. *Pugh.* vol. 33, p. 489

49. Specific performance of an agreement between four persons, regulating the right to all their future patented inventions, refused, on the following grounds: first, that it was too vague and uncertain as to its duration; secondly, that it involved a contract for personal services of an uncertain duration; thirdly, the want of mutuality in regard to one of the stipulations; and fourthly, that the position of the parties had been materially varied by the assignment by one, to a stranger, of all his interest under the agreement. *Firth* v. *Ridley.* vol. 33, p. 516

50. A contract for the sale of a patent specifically enforced at the suit of the vendor, although all he required was the payment of the purchase-money. *Cogent* v. *Gibson.* vol. 33, p. 557

51. The Defendant agreed to purchase from the Plaintiff some shares in a company, and he paid the price, but the directors (having the power) refused to assent, so that the purchaser's name could not be placed on the register. The Court refused to compel the assent, and also refused to decree the specific performance of the contract. *Bermingham* v. *Sheridan; Re Waterloo Life, &c. Assurance Company.* (No. 4.) vol. 33, p. 660

52. A delay of eleven years occurred in the completion of a contract for the sale of an estate, but which was occasioned by the state of the title. Held, that the purchaser was not, after this delay, compellable to complete; but that, if he did, he must pay interest on the purchase-money according to the contract, his money not having in the meanwhile been lying idle. *Forrer* v. *Nash.* vol. 34, p. 167

53. Upon a treaty for a lease of a house, the lessor sent to the lessee a letter, specifying the terms on which he would let it. The lessee immediately took possession, but he signed no contract. The lessor having instituted a suit for specific performance, the lessee insisted that, in addition to the terms contained in the letter, the lessor had verbally promised to put the house into thorough repair; this the lessor denied. The Court doubted whether the specific performance could be enforced, and gave the Defendant the option, either of a decree for specific performance on the terms of the letter, or a decree to deliver up possession and to pay an occupation rent. But if he refused to exercise the option, the Court directed a decree on the latter branch of the alternative. *Chappell* v. *Gregory.* vol. 34, p. 250

54. Questions as to the validity of the contract and as to whether it is inequitable to enforce its specific performance must be determined at the hearing; questions of title are referred to Chambers. *Wood* v. *Oglander.* vol. 34, p. 518

55. The Plaintiff agreed to grant to the Defendant a lease for twenty-one years, with a right to re-let; but he had only a term of twenty years, and could not underlet without the consent of his landlord. The Defendant repudiated the contract. The Plaintiff afterwards filed his bill for specific performance, and, pending the suit, the landlord agreed to concur. Held, that the contract could not be enforced, and the bill was dismissed with costs. *Forrer* v. *Nash.* vol. 35, p. 167

SPECIFIC PERFORMANCE (COSTS).

1. The fact of a title having been perfected in the Master's office, does not determine the question of the costs of a suit for specific performance, which depends upon whether the defects which have been removed there were the occasion of the suit. *Scoones* v. *Morrell.* vol. 1, p. 251

2. A bill was filed by a vendor for the specific performance of a contract; the purchaser insisted that the contract had

been abandoned; failing in this defence, he was ordered to pay the costs of suit up to the hearing, and the usual reference was made as to title. *Taylor* v. *Brown.* vol. 2, p. 180

3. In a suit for specific performance, a purchaser set up defence which prevented the Plaintiff obtaining on motion a reference as to title; the Defendant failing to establish such defence was ordered to pay the costs up to, and inclusive of the hearing. *Hyde* v. *Dallaway.* vol. 4, p. 606

4. Where a bill for specific performance is filed by a purchaser, and it turns out that the vendor cannot make a good title, the bill is dismissed, but without costs. *Malden* v. *Fyson.* vol. 9, p. 347

5. The rule, that the costs of a suit for specific performance depend upon when the title was first shewn, is to be strictly adhered to. *Wilkinson* v. *Hartley.* vol. 15, p. 183

6. A vendor agreed to surrender or procure some person to surrender, and the costs of the surrender were to be paid by the purchaser. It was found necessary to procure a surrender under the Trustee Act. Held, that the costs of the proceedings ought to be paid by the vendor. *Bradley* v. *Munton.* vol. 16, p. 294

7. When a vendor succeeds in a suit for specific performance, he is entitled to costs, notwithstanding the title was first shewn in the Master's office, if the suit was occasioned solely by the conduct of the Defendant. *Peers* v. *Sneyd.* vol. 17, p. 151

8. A purchaser having unsuccessfully insisted, that an instrument of republication did not sufficiently refer to the will, so as to identify it, no costs were given on either side, on a bill for specific performance by vendor, who had not made out his title. *Weddall* v *Nixon.* vol. 17, p. 160

9. In a suit by vendor for specific performance, costs were given to him, although both parties were in the wrong as to the only point in contest, namely, as to interest on the purchase-money, a good title having been shewn prior to the institution of the suit, and it appearing that the conduct of the purchaser had prevented the completion down to that time. *Sherwin* v. *Shakspeare.* vol. 17, p. 267

10. A purchaser, who had altogether denied the vendor's right to a specific performance, ordered to pay the costs of suit instituted by the vendor for that purpose down to the hearing, although the title was not finally completed until after the decree. *Carrodus* v. *Sharp.* vol. 20, p. 56

11. The Defendant, a purchaser, ordered to pay all the costs, though a good title was not shewn until after the institution of the suit, by the production of a declaration which was not the cause of dispute, and had not been previously required. *Bridges* v. *Longman.* vol. 24, p. 27

SPECIFIC PERFORMANCE (REFERENCE AS TO TITLE.)

[*See* ACCEPTANCE OF TITLE, VENDOR AND PURCHASER (TITLE), WAIVER OF REQUISITIONS.]

1. A bill prayed the specific performance of an agreement, "if a good title could be made." At the hearing it was declared that the agreement ought to be specifically performed, and it was referred to the Master to inquire whether a good title could be made. The Master reported in the negative. The Plaintiff on further directions waived all objections to the title, and proposed to take the property; this was resisted by the vendor: Held, that the Plaintiff was entitled; but being aware, at the first hearing, of the objections to the title, he ought to pay the costs of the investigation in the Master's office. *Bennett* v. *Fowler.* vol. 2, p. 302

2. A party, acting as the absolute owner, contracted to sell property. He was the absolute owner of part, and as to the other part he was tenant for life, with power of sale, at his request and by his direction, vested in trustees. Upon a bill by the purchaser for a specific performance, an inquiry was directed "whether the Defendant could make a good title, or could by application to the trustees, procure a good title to be made." *Graham* v. *Oliver.* vol. 3, p. 124

3. The Defendant, a purchaser of a public-house, insisted that time was of the essence of the contract, and that the abstract had not been delivered within the time agreed on. A reference without prejudice was made, on motion, as to the title, and when it was first shewn. *Foxlowe* v. *Amcoats.* vol. 3, p. 496

4. Where there has been great delay, and there is little hope of perfecting the title within a reasonable time, the Court will dismiss a purchaser with costs. *Fraser* v. *Wood.* vol. 8, p. 339

5. The Defendant agreed with the Plaintiff to take a house in the *Strand*, to be used for the business of printing. Nothing was said as to covenants. The Plaintiff was a lessee under a lease containing covenants against "obnoxious trades," and the Defendant was told that the premises were leasehold. A reference as to title was directed, having regard to the covenants in the lease and the purposes for which the premises were taken. *Wilbraham* v. *Livesey.* vol. 18, p. 206

6. A vendor filed a claim for specific per-

formance, and gave notice of motion for a decree. The Defendant did not appear, and a decree was made against him, directing a specific performance, without any reference as to title. Subsequently, upon the motion of the Defendant, the Court allowed a reference as to title to be inserted in the decree, upon his paying all the costs of the application. *Hughes* v. *Jones.* vol. 26, p. 24

SPECIFIC PERFORMANCE WITH COMPENSATION.

[*See* PAROL EVIDENCE.]

1. A tenant in possession purchased the property, which was represented to be forty-six feet in depth; it turned out to be thirty-three only. Held, that he was entitled to an abatement of price. *King* v. *Wilson.* vol. 6, p. 124
2. One stipulation in a contract for purchase was, that the vendor should make a certain road, which it turned out he could not make without incurring a forfeiture. Held, that the purchaser was entitled to a decree for specific performwith a compensation for the damage, if any, in consequence of the road not being formed. *Peacock* v. *Penson.* vol. 11, p. 355
3. Property, sold as copyhold, turned out to be partly freehold. Held, that the vendor could not compel a specific performance, and that special conditions, providing that errors in the description should not invalidate the sale, and for a compensation, did not alter the case. *Ayles* v. *Cox.* vol. 16, p. 23
4. A residence with four acres was sold. It turned out, that there was no title to a slip of ground of about a quarter of an acre, between the house and the high road. Held, that it was not a proper subject for compensation, and that a good title could not be made. *Perkins* v. *Ede.* vol. 16, p. 193
5. When a vendor can make a title to three-fourths only of the property sold, the purchaser is not entitled to take the three-fourths with an abatement, but he may take the three-fourths at the price agreed on for the whole. *Shaw* v. *Topham.* vol. 19, p. 576
6. When the completion of a purchase is delayed through the default of the vendor in possession, and the property has diminished in value, or has been deteriorated by permissive waste, the purchaser is entitled to compensation. *The Regent's Canal Company* v. *Ware.* vol. 23, p. 575
7. Redeemed land tax, amounting to 41*l.* per annum, was sold by auction in one lot. The particulars represented 3*l.* 14*s.* (part of it) as charged on three houses, but stated that the title consisted of a contract for redemption of the land tax of the 25th of *March*, 1818. This contract, when produced after the sale, shewed that the 3*l.* 14*s.* was not charged on three houses, but consisted of three small sums, each charged separately on one of the houses. Held, first, that the misdescription was fatal; secondly, that the reference to the contract did not give the purchaser notice of the actual state of the title; thirdly, that it was not a matter susceptible of compensation, and a bill by the vendor for specific performance was dismissed with costs. *Cox* v. *Coventon.* vol. 31, p. 378
8. The tenant for life of a real estate, the trustees of which were empowered to sell it at his request and by his direction, entered into a contract to sell it. The estate was subject, with others, to a charge for younger children. The tenant for life died without issue, and the fee of the estate passed under his will. Held, that the purchaser, on waiving the objection as to the charge, was entitled to a specific performance against the representatives of the vendor, but that he was not entitled either to an indemnity against the charge or to compensation. *Bainbridge* v. *Kinnaird.* vol. 32, p. 346

SPOLIATION.

[*See* PRESUMPTION.]

1. When an accounting party destroys the accounts before the matters have been finally adjusted and still more pending a litigation, the Court will presume everything most unfavourable to him, consistent with the established facts. *Gray* v. *Haig; Haig* v. *Gray.* vol. 20, p. 219
2. A solicitor deposited some of his own deeds, as a security for a sum of money due to two clients, in a box belonging to them. He retained the box, but after his death it was found that he had abstracted the deeds from it, and they could not be distinguished from the solicitor's other deeds. Held, that the clients had a lien on all the solicitor's deeds for their debt. *Mason* v. *Morley.* (No. 2.) vol. 34, p. 475
(See *Mason* v. *Morley.* vol. 34, p. 471)

STAMP.

1. A Plaintiff sued to recover a large unliquidated sum due to her testatrix; but the stamp on the probate did not cover the amount claimed. Held, that the Plaintiff could not obtain a decree even for accounts and inquiries, until the probate had been properly stamped. The cause stood over, and the commissioners

stamped the probate and gave credit for the duty. *Howard* v. *Prince*.
vol. 10, p. 312

2. Whether the practice of the Court of allowing a copy of a lost instrument to be stamped, in order that it may be given in evidence is altered since the 13 & 14 *Vict.* c. 97. *May* v. *May*.
vol. 33, p. 81

STANNARIES.

[*See* JURISDICTION (OTHER COURTS).]

STATUTES.

[*See* STATUTE (CONSTRUCTION), STATUTE OF FRAUDS, STATUTE OF LIMITATIONS.]

Eliz. 13, c. 5 (*see* Fraudulent Conveyance).
c. 10 (*see* Lease).
27, c. 5 (*see* Voluntary Settlement, &c.).
c. 20 (*see* Trust).
Car. II. 21, c. 24 (*see* Evidence).
29, c. 3 (*see* Statute of Frauds).
Will. & *Mary* 4 & 5, c. 20 (*see* Devastavit).
Anne 4, c. 16 (*see* Subpœna).
6, c. 18 (*see* Jurisdiction).
c. 35 (*see* Registration Act).
Geo. II. 9, c. 31 (*see* Mortmain).
III. 13, c. 3 (*see* Alien).
c. 21 (*see* Alien).
33, c. 63 (*see* Insurance).
39 & 40, c. 98 (*see* Remoteness, Thellusson Act).
40, c. 88 (*see* Probate).
c. 98 (*see* Remoteness, Thellusson Act).
52, c. 101 (*see* Charity).
53, c. 14 (*see* Annuity).
59, c. 12 (*see* Parish).
IV. 1, c. 119 (*see* Estate Tail).
6, c. 16 (*see* Estate Entail).
c. 64 (*see* Costs).
7, c. 57 (*see* Insolvent).
c. 77 (*see* Specific Performance).
9, c. 73 (*see* Insolvent).
10, c. 56 (*see* Building Society).
Will. IV. 1, c. 36 (*see* Formâ Pauperis, Process Pro Confesso).
c. 40 (*see* Executor (taking beneficially)).
c. 47 (*see* Trustee Act).
c. 60 (*see* Trustee Act).
2, c. 57 (*see* Charity, 4).
2 & 3, c. 125 (*see* Trustee Relief Act).
3 & 4, c. 27 (*see* Statute of Limitations).
c. 94 (*see* Chief Clerk).
c. 74 (*see* Estate Tail, Married Woman's Conveyance).
Will. IV. 3 & 4, c. 104 (*see* Debt).
c. 105 (*see* Dower).
4 & 5, c. 22 (*see* Apportionment).
c. 29 (*see* Investment).
5 & 6, c. 76 (*see* Jurisdiction, Charity).
6 & 7, c. 32 (*see* Building Society).
c. 34 (*see* Taxation).
c. 77 (*see* Charity).
7, c. 26 (*see* Revocation, Will).
Vict. 1, c. 78 (*see* Corporation).
1 & 2, c. 73 (*see* Taxation).
c. 110 (*see* Judgment Debt).
2 & 3, c. 11 (*see* Devastavit).
3 & 4, c. 55 (*see* Draining Act).
c. 113 (*see* Charity).
4 & 5, c. 35 (*see* Copyhold).
5, c. 5 (*see* Jurisdiction).
5 & 6, c. 22 (*see* Jurisdiction).
c. 27 (*see* Lease).
c. 100 (*see* Patent).
6 & 7, c. 32 (*see* Building Society).
c. 37 (*see* Mortmain).
c. 73 (*see* Solicitor, Taxation).
c. 85 (*see* Evidence).
7 & 8, c. 32 (*see* Bank).
c. 110 (*see* Company).
c. 111 (*see* Bankruptcy).
8, c. 18 (*see* Lands Clauses Act, Railway).
8 & 9, c. 16 (*see* Company).
c. 52 (*see* Jewish Charity).
c. 118 (*see* Exchange).
10 & 11, c. 96 (*see* Trustee Relief Act).
11 & 12, c. 45 (*see* Winding up).
c. 63 (*see* Fishery).
c. 112 (*see* Sewage).
12 & 13, c. 106 (*see* Bankrupt).
13 & 14, c. 35 (*see* Affidavits).
c. 60 (*see* Trustee Act).
c. 94 (*see* Mortmain).
c. 97 (*see* Stamp).
c. 115 (*see* Insurance).
15 & 16, c. 51 (*see* Copyhold).
c. 55 (*see* Trustee Relief Act).
c. 76 (*see* Mortgage).
c. 80 (*see* Accountant).
c. 83 (*see* Patent).
c. 85 (*see* Burial).
c. 86 (*see* Filing Bill, Production of Documents, Witness, Evidence, Parties, Chambers, Revivor, Injunction, Appearance, Supplement, Absent Parties).
16, c. 5 (*see* Patent).
16 & 17, c. 13 (*see* Burial).
c. 51 (*see* Succession Duty).
c. 86 (*see* Judgment, Mortgage).
c. 157 (*see* Charitable Trusts Act, Endowment).
17 & 18, c. 82 (*see* Prohibition).
c. 104 (*see* Ship).

Vict. 17 & 18, c. 113 (*see* Mortgage Exoneration).
c. 125 (*see* Arbitration).
18 & 19, c. 15 (*see* Deed).
c. 43 (*see* Marriage Settlement).
c. 47 (*see* Winding up).
c. 63 (*see* Friendly Society's Act).
c. 122 (*see* Metropolitan Building Act).
19 & 20, c. 47 (*see* Company).
c. 120 (*see* Settled Estates Act).
20 & 21, c. 14 (*see* Security for Costs).
c. 78 (*see* Jurisdiction).
c. 85 (*see* Married Woman).
21 & 22, c. 27 (*see* Damages).
c. 106 (*see* East India Company).
c. 108 (*see* Married Woman).
22 & 23, c. 35 (*see* Issue at Law, Questions of Law or Fact).
c. 63 (*see* Foreign Law).
23 & 24, c. 35 (*see* Trustee Relief Act).
c. 38 (*see* Judgment).
c. 112 (*see* Payment out of Court).
c. 127 (*see* Solicitor).
c. 145 (*see* Trustee).
25 & 26, c. 53 (*see* Land Registry).
c. 63 (*see* Ship).
c. 86 (*see* Lunatic).
c. 89 (*see* Winding up).

STATUTES (CONSTRUCTION).

1. The 39 *Eliz.* c. 5, enables "all and every *person and persons*" to found hospitals, &c., and to create them bodies corporate. Held, that a corporation may exercise the powers given by the act to "person and persons." *Attorney-General* v. *The Corporation of Newcastle.* vol. 5, p. 307
2. The Court knows nothing of the intention of an act of parliament, except from the words in which it is expressed, applied to the facts existing at the time. *Logan* v. *The Earl of Courtown.* vol. 13, p. 22
3. Persons interfering with the property of individuals, by virtue of an act of parliament, are strictly tied down to the limits of the powers given by the act, and they are bound to shew, clearly and distinctly, that they are empowered by the act to do what they propose to do. *Oldaker* v. *Hunt.* vol. 19, p. 485
4. Where one clause of an act of parliament directs specific acts to be done, such acts may be done though they would be included in the general terms of a subsequent prohibitory clause, for the former clause is not controlled by the latter. *De Winton* v. *Mayor of Brecon.* vol. 26, p. 533

STATUTE OF DISTRIBUTIONS.

[*See* NEXT OF KIN.]

STATUTE OF FRAUDS.

[*See* PART PERFORMANCE.]

1. Where the want of signature to an agreement for the sale of lands clearly appears on the bill, the objection may be taken advantage of by general demurrer; but the statements of the bill not being inconsistent with a signature by the party to be charged, and containing allegations of part performance, a general demurrer thereto was overruled. *Field* v. *Hutchinson.* vol. 1, p. 599
2. The Defendant, on the 6th of *June*, offered in writing to sell his farm for 1,000*l.*; but the Plaintiff offered 950*l.*, which the Defendant, on the 27th of *June*, after consideration, refused to accept. On the 29th the Plaintiff, by letter, agreed to give 1,000*l.*, but there appeared to be no assent on the part of the Defendant, though there had been no withdrawal of the first offer. Held, that there was no binding contract within the Statute of Frauds. *Hyde* v. *Wrench.* vol. 3, p. 334
3. A parent, by his agent, on the marriage of his daughter, entered into an engagement, in writing, with her intended husband, in which his name was written, but not signed. Held, that a letter written by the parent after the marriage, referring to the memorandum, as stating the terms of the engagement, was either a sufficient agreement signed by the party, within the Statute of Frauds, or a sufficient recognition of the use made of his name in the memorandum. *De Beil* v. *Thomson.* vol. 3, p. 469
4. Contract for the purchase of tithes not signed by the party chargeable, held, under the circumstances, to have been taken out of the Statute of Frauds. *Blachford* v. *Kirkpatrick.* vol. 6, p. 232
5. *A.*'s agent wrote to *B.*, "I am directed to offer you for the premises 3,000*l.*," &c. *B.* replied, "We accept your offer. If you approve of the inclosed, sign the same, and we will, on receipt of the deposit, sign you a copy. *B.* filed a bill for specific performance, and *A.* did not produce the inclosure. Held, that the two letters constituted a valid contract, intended to be carried into effect by the inclosure; and that, though it did not appear that the inclosure had been approved of, still that this did not affect the prior valid contract. *Gibbins* v. *The*

Board of Management of the North Eastern Metropolitan Asylum District. vol. 11, p. 1

6. Where lands are held in trust, the declaration of trust, required by the 7th section of the Statute of Frauds to be signed "by the party who is, by law, enabled to declare such trust," must be signed by the beneficial owner, and not by the trustee who has the legal estate. *Tierney* v. *Wood.* vol. 19, p. 330
7. The legal fee in lands was vested in *A.*, in trust for *B.* *B.* signed a document addressed to *A.*, directing that the lands and other property should, after his death, be held for the benefit of certain persons. The document was not attested. Held, that this was an effectual declaration of trust, within the 7th section of the Statute of Frauds, by the beneficial owner, and not a testamentary instrument. *Ibid.*
8. Admissibility of evidence of a parol contract as to the continuance of a partnership where real estate is concerned. *Essex* v. *Essex.* vol. 20, p. 442
9. Prior to his marriage, a husband entered into a parol contract to settle his intended wife's property. The property was not settled until after the marriage. Held, that the antenuptial parol contract was inoperative under the Statute of Frauds, that the marriage was not a part performance, that the post-nuptial settlement was voluntary, and, the husband being greatly indebted at the time, the settlement was void as against the husband's creditors. *Warden* v. *Jones.* vol. 23, p. 487
10. A bill, which sought to enforce a trust of lands, did not allege that such trust was in writing. Held, on demurrer, that this was sufficient, for the Statute of Frauds only refers to the proof of a trust by some writing. *Davies* v. *Otty.* vol. 33, p. 540
11. That part of the fourth section of the Statute of Frauds which requires agreements not to be performed within a year to be in writing and signed, does not apply to cases in which the performance may, by possibility or accident, be extended beyond that period; it is to be confined to cases where the agreement is not to be performed and cannot be carried into execution within that space of time. Therefore, where *A. B.* agreed by parol, for valuable consideration, to leave *C. D.* a certain amount by his will, and *A. B.* died fourteen years after the agreement: Held, that the Statute of Frauds did not apply. *Ridley* v. *Ridley.* vol. 34, p. 478
12. The Plaintiff apprehensive of being indicted for bigamy (which it turned out he was not liable to) conveyed real property to the Defendant on a parol agreement to re-transfer when the difficulty had passed. On a bill for a re-transfer, the Defendant denied the agreement and insisted on the Statute of Frauds, the trust not being in writing. Held, that this was a case of fraud and that the statute did not apply. *Davies* v. *Otty.* (No. 2.) vol. 35, p. 208

STATUTE OF LIMITATIONS.

[*See* ADVERSE POSSESSION, INTEREST, STATUTE OF LIMITATIONS (FRAUD AND TRUST), STATUTE OF LIMITATIONS (MORTGAGE).

1. An ejectment bill, filed in 1842, stated that the Plaintiff's alleged right to the land accrued in 1812, that a bill had been filed in 1824 to recover the property, and that an ejectment had been brought in 1832, which was stayed until the Plaintiff had paid the costs of a former ejectment; but it did not state the result of the suit or action. Held, that it must be inferred that they had failed, and that they did not prevent the operation of the Statute of Limitations. *Bampton* v. *Birchall.* vol. 5, p. 67
2. To a bill by a dean and chapter for tithes accrued within twenty-one years, and stating a decree in 1813, establishing the right, but not alleging that tithes had been accounted for under it, and stating that the Plaintiffs had, in 1831, granted a lease of the tithes of the rectory which existed till 1837, but not alleging that the lease was granted with a view to the tithes in question, or that the lessee paid anything on account of them, a plea of the Statute of Limitations, averring that the right of suit did not first accrue within twenty years, and that the Plaintiffs had not been in possession within twenty years, was allowed. *The Dean and Chapter of Ely* v. *Bliss.* vol. 5, p. 574
3. Estate of a testator engaged in a banking company established under the 7 *Geo.* 4, c. 46, held released after the expiration of three years. *Barker* v. *Buttress.* vol. 7, p. 134
4. A Plaintiff brought an action of ejectment against a person in possession, and afterwards filed a bill of discovery in aid of the action, and to restrain the Defendant from setting up outstanding terms. By the death of the Defendant the suit abated, and the benefit of the action at law became lost. After twenty years adverse possession, the Plaintiff having filed a bill of revivor, a demurrer thereto was allowed, on the ground that no effectual proceeding could now be had at law, and that the discovery and relief sought would therefore be useless. *Bampton* v. *Birchall.* vol. 11, p. 38
5. A suit dismissed as against the principal

Defendant, and which, though pending as against the others, has yet been practically abandoned, does not prevent the operation of the Statute of Limitations. *Dixon* v. *Gayfere*; *Fluker* v. *Gordon*. vol. 17, p. 421

6. The Attorney-General, whether suing *ex officio*, or at the relation of others, is not a "person" having a right to bring an action, or a suit in equity to recover land, within the contemplation of the Statute of Limitations (3 & 4 Will. 4, c. 27); nor are the churchwardens and overseers of a parish, in respect of property, the rents of which were applicable to the poor of the parish, but which had been alienated prior to the 59 Geo. 3, c. 12; nor are the poor. *Attorney-General* v. *Magdalen College*. vol. 18, p. 223
7. When a Defendant is out of the jurisdiction, and the bill prays process against him, when he shall come within it, the operation of the Statute of Limitations is suspended though he has neither been served nor appeared in the suit. *Hele* v. *Lord Bexley*; *Whitfield* v. *Bowyer*; *Whitfield* v. *Knight*. vol. 20, p. 127
8. Pendency of a suit held to prevent a claim being barred by lapse of time. *Alsop* v. *Bell*. vol. 24, p. 451
9. In taking the accounts in an administration suit, any creditor may object that another creditor's debt is barred by the Statute of Limitations; but *semble*, that such an objection cannot be taken to the Plaintiff's debt, which is the foundation of the decree. *Fuller* v. *Redman*. (No. 2.) vol. 26, p. 614
10. When a fund is set apart to answer an annuity, the Statute of Limitations cannot be set up against the residuary legatee on the death of the annuitant forty years afterwards; but it can as against a pecuniary legatee, whose legacy was payable on the testator's death. *Bright* v. *Larcher*. vol, 27, p. 130
11. An improvident lease was granted by a charitable corporation to a trustee for the master. Held, after twenty years' enjoyment under it, that the right of the Attorney-General to question its validity was barred by the Statute of Limitations (3 & 4 *Will.* 4, c. 27). *The Attorney-General* v. *Payne*. vol. 27, p. 168
12. A person resident in *Jersey* died in 1850 indebted to a person resident in *England*. He appointed his wife executrix, and she proved the will in *Jersey* alone. The executrix had in 1851 been in *England* for three weeks, and had, while in *Jersey*, received a sum due to her testator in this country. Held, in 1860, that the Statute of Limitations did not apply, the executrix not having been liable to be sued in this country, and having done no act here to constitute herself an English executrix. *Flood* v. *Patterson*. vol. 29, p. 295
13. *A.* was tenant by the curtesy, with remainder to his eldest son *B.* in tail, with remainder to *C.* *B.* sold and conveyed the property to *A.*, and levied a fine, in which *A.* was conusee. Held, that there was no discontinuance, that the remainder was not barred, and that the title was bad. *Anderson* v. *Anderson*. vol. 30, p. 209
14. In an administration suit, the administratrix and all the persons interested (except one who was not before the court) declined to object that some of the debts which were claimed were barred by the Statute of Limitations. The Court, on the administratrix taking the risk, ordered payment of such debts. *Alston* v. *Trollope*. vol. 35, p. 466

STATUTE OF LIMITATIONS (FRAUD AND TRUST).

1. A trust for the payment of debts, in a will, will not prevent the operation of the Statute of Limitations. *Evans* v. *Tweedy*. vol. 1, p. 55
(*Proud* v. *Proud*. vol. 32, p. 234)
2. In 1816 *A.* mortgaged an estate to *B.*, and covenanted to pay the mortgage money; and, in *July*, 1817, *A.* and *B.*, as his surety, conveyed the property to *C.*, on trust to sell and pay, first, a debt due from *A.* to *C.*, which *A.* and *B.* also covenanted to pay; and secondly, to pay *B.*'s debt. In *August* following, *A.* executed to *B.* an equitable charge on other property. In 1834 *C.* sold the estate, and applied the produce in part payment of his demand. In 1842 a bill was filed by *B.* against *A.* to realize the equitable charge. Held, that, until the trust of the deed of *July*, 1817, was exhausted in 1834, the covenant in the deed of 1816 subsisted, wholly unaffected by time; that the debt and the personal remedy to recover it subsisted, at the time the bill was filed, and that the equitable charge was therefore then operative. *Bennett* v. *Cooper*. vol. 9, p. 252
3. The claim for arrears of an annuity given by will beyond six years held not barred by the statute, there being trust for the payment. *Playfair* v. *Cooper*; *Prince* v. *Cooper*. vol. 17, p. 187
4. The maker of a note died in 1829, having charged his real estate with payment of his debts; the payee died in 1851, but an arrangement had been made by the trustee of his will with the payee that interest should be payable till the death of the payee. Held, that the remedy was not barred. *Briggs* v. *Wilson*. vol. 17, p. 330
5. If trustees, in whom land is vested for charitable purposes, convey the land to a purchaser for valuable consideration,

as between themselves and their *cestuis que trusts*, no time creates a bar, but the trustees and their *cestuis que trusts* are barred from instituting any proceedings in their own names, to recover the land from a purchaser when twenty years have elapsed from the conveyance, subject to the exception contained in the clause which saves rights pending disabilities. *The Attorney-General* v. *Magdalen College, Oxford.* vol. 18, p. 223

6. Where no person, or class of persons, have existed, who could institute proceedings to redress a wrongful alienation of charity property, the Statute of Limitations (3 & 4 *Will.* 4, c. 27) does not bar suits by the Attorney-General, whether *ex officio*, or at relation to redress the injury. *Ibid.*

7. A fund was standing to the account of two trustees in the books of some bankers, who had notice that it was a trust fund. By the direction of the tenant for life alone, they, in 1843, transferred it to his account, and thereby obtained payment of a debt due from him to them. Held, that the trustees might sue the bankers in this Court to have the trust fund replaced, and that the Statute of Limitations was inapplicable. *Bridgman* v. *Gill.* vol. 24, p. 302

8. A testator devised his real estate to trustees for a term of 5,000 years, to raise the deficiency of his personal estate to pay his debts and legacies, and which term was to cease on the performance of the trusts; subject thereto he devised it to his son in fee. In 1807 the son conveyed his estate to a creditor (*A. B.*), in trust, by sale or mortgage, to raise and pay the debt. In 1811 a suit was instituted to administer the testator's real and personal estate, but *A. B.* was not made a party until 1841. He took no steps to realize his security, and obtained no payment or acknowledgment. The estate was sold, and the surplus was in Court. Held, in 1857, that *A. B.*'s claim was barred by the Statute of Limitations, and that it was not protected either by the prior term or the pending litigation. *Humble* v. *Humble.* vol. 24, p. 535

9. In 1825 *A. B.*, on his insolvency, omitted from his schedule, which he verified on oath, an estate to which he was entitled. In 1853 his assignee filed his bill against the assignees under a subsequent bankruptcy and others for the recovery of the property. Held, that the claim was not barred by the Statute of Limitations, the case coming within the exception of the 26th section of the 3 & 4 *Will.* 4, c. 27, there having been "a concealed fraud." *Sturgis* v. *Morse.* vol. 24, p. 541

10. In a suit by the executors of two deceased partners against the third, who survived, to take the accounts of the concern, a receiver was appointed, and ordered to pay the proceeds of the assets into Court. Instead of this, he paid them over to one of the Plaintiffs, in part discharge of the debt due to their testator from the estate of the other deceased partner, upon the balance of the accounts as then estimated. Held, that such payment did not take such debt out of the Statute of Limitations. *Whitley* v. *Lowe.* vol. 25, p. 421

11. A testator died in 1818. *A. B.*, his administrator, received assets and placed them in a bank, to an account—"*A. B.*'s trustee," and where they still remained. *A. B.* died in 1853, and to a suit instituted by the administrator *de bonis non* of the original testator against the representatives of *A. B.* and the bankers, to recover the fund, the representatives of *A. B.* set up the Statute of Limitations, but the bankers were willing to pay the amount. Held, that the statute was inapplicable, and a decree was made for the Plaintiff. Held also, that in such a suit the representatives of *A. B.* could not be charged with interest. *Smith* v. *Acton.* vol. 26, p. 210

12. A testator charged his real estates with his debts, and he devised his *C.* plantation in trust to pay his debts. He died in 1834, and the produce of *C.* being in Court: Held, in 1859, that the creditors were not barred as to the fund in Court, a trust having been created in their favour, but that they were barred as to the other real estates, they having a mere charge thereon. *Jacquet* v. *Jacquet.* vol. 27, p. 332

13. A trust created by a testator of his real estate for payment of his debts, does not remove from a creditor the consequences arising from his negligence or acquiescence, whether expressed or implied. *Harcourt* v. *White.* vol. 28, p. 303

14. A testator died in 1842, having appointed *T. R.* and others his executors. *T. R.*, who owed the testator 300*l.* on promissory note, did not prove the will until 1855. Held, that he could not then set up the Statute of Limitations in respect of the debt; that the act of proving had relation to the testator's death, and that he must be considered as having the 300*l.* in his hands as assets, and be charged therewith with interest from 1855. *Ingle* v. *Richards.* (No. 2.) vol. 28, p. 366

15. In cases of direct trust, the Statutes of Limitations are inapplicable; but this Court will not grant relief to a *cestui que trust* against his trustee, after twenty years' delay, if unaccounted for. *Bright* v. *Legerton.* (No. 1.) vol. 29, p. 60

16. Trustees had, by mistake, paid to *A. B.* (one of the *cestuis que trusts*) a portion of the trust funds to which he was not en-

titled. In a suit by another party interested against *A. B.* to make him refund: Held, that the Statute of Limitations was inapplicable; that he was bound to repay, though more than six years had elapsed, and that all his interest in the trust fund was liable to make good the amount. *Harris* v. *Harris.* (No. 2.) vol. 29, p. 110

17. Upon the grant of an annuity secured on real estate, a term was vested in trustees, in trust to raise and pay the arrears, and hold the surplus of the proceeds in trust for the grantor. Held, that the relation of trustee and *cestui que trust* being created, as between the trustee and the grantor and grantee, the case came within the 25th section of the 3 & 4 *Will.* 4, c. 27, and that the annuitant's right to arrears was not limited to six years, under the 42nd section, as against the grantor and his subsequent incumbrancers. *Lewis* v. *Duncombe.* (No. 2.) vol. 29, p. 175

18. A simple contract debt of a friendly society contracted in 1840: Held, not barred by the Statute of Limitations in 1860, a trust of the property having, on its dissolution, been declared for the benefit of its creditors. *Pare* v. *Clegg.* vol. 29, p. 589

19. In 1824 a reversionary interest in funds, vested in trustees, was assigned to secure the payment of a sum on the following year. The reversion fell in in 1860, no notice having been given to the trustee, nor any interest paid or acknowledgment made in the meantime. Held, that the mortgagee's right against the fund was not barred by the Statute of Limitations or the lapse of time. *Re Lowe's Settlement.* vol. 30, p. 95

20. Where a trust is created by the act of parties, no time is a bar to relief, but where there is no trust, except such as is created by the decree of the Court on setting aside the transaction, time runs from the discovery of circumstances which constitute the right to relief. *The Marquis of Clanricarde and Others* v. *Henning.* vol. 30, p. 175

21. An executor, in his residuary account, stated that he had retained in trust the amount of *A. B.*'s legacy. He afterwards paid over the residue. Held, that the executor had constituted himself a trustee for *A. B.*, and that his remedy for recovery was not barred by the Statute of Limitations or the lapse of time. *Tyson* v. *Jackson.* vol. 30, p. 384

22. Distinction between a charge and trust since the 3 & 4 *Will.* 4, c. 27. A charge of debts on real estate is not a trust so as to prevent the operation of the Statute of Limitations as regards the devisee, nor is a charge of debts accompanied by a direction to raise the amount by mortgage or otherwise. *Dickinson* v. *Teasdale.* vol. 31, p. 511

23. A trustee who is in possession of land is so on behalf of his *cestuis que trusts* and his making a mistake as to the persons who really are his *cestuis que trusts* cannot affect the rights of the *cestuis que trusts inter se. Lister* v. *Pickford.* vol. 34, p. 576

STATUTE OF LIMITATIONS (MORTGAGE).

1. A canal company conveyed, under their common seal, the canal, works, and rates to a mortgagee, to hold, &c., until repayment of certain money borrowed and interest. There was no covenant to pay. Held, under the modern Statutes of Limitations, that although the mortgagee could recover the principal within twenty years, yet his remedy for arrears of interest was limited to six years. *Hodges* v. *Croydon Canal Company.* vol. 3, p. 86

2. A mortgagee, notwithstanding the interest mortgaged is reversionary, can only recover six years' arrears of interest as against the land mortgaged, although he may recover twenty years' arrears on the covenant to pay. *Sinclair* v. *Jackson.* vol. 17, p. 405

3. When money is secured by an ordinary mortgage by covenant and bond, the mortgagor, in a suit to foreclose, can only recover six years' arrears of interest, but the case is different when there is a trust to secure it. *Round* v. *Bell.* vol. 30, p. 121

4. After the sale of the estate by a trustee for a mortgagee, under a power of sale, it was held, in a suit by the mortgagor to recover the surplus money, that the mortgagee could not, under the 3 & 4 *Will.* 4, c. 27, retain more than six years' arrears of interest out of the purchase-money. *Mason* v. *Broadbent.* vol. 33, p. 296

STAYING PROCEEDINGS.

[*See* DISMISSAL BY PLAINTIFF, DISMISSAL FOR WANT OF PROSECUTION.]

1. On an application being made to the Court below to stay the execution of an order pending an appeal, the party applying pays the costs; but where before the motion to stay proceedings has been decided the Court above reversed the order below, Held, that the costs of the motion ought to be costs in the cause. *Richardson* v. *The Bank of England.* vol. 1, p. 153

2. Where a debt is claimed or a demand made in a suit, and the Defendant, admitting his liability, offers to pay the debt or comply with the demand and to put the Plaintiff in the same situation as he would have been in if the liability had been satisfied without suit, the Court, on motion, will stay all further proceedings.

Proceedings in a creditor's suit stayed as against some Defendants on payment of one of the Plaintiff's debts, on which alone the Defendants applying were liable, and, under very special circumstances, without costs. *Holden and Mellish* v. *Kynaston.* vol. 2, p. 204

3. Two suits were instituted for similar objects, one was attached to the Lord Chancellor, and the other to the Master of the Rolls' Court. A reference was made at the Rolls to inquire which was most for the benefit of the infants. *Starten* v. *Bartholomew.* vol. 5, p. 372

4. After answer, and after liberty to amend had been refused, a suit abated by the death of the Plaintiff. The executors filed an original bill of a similar nature. The Court stayed the proceedings in the second suit, until the costs in the first had been paid. *Altree* v. *Hordern.* vol. 5, p. 623

5. Two suits were instituted on behalf of infants, but it was found that it was most for their benefit to prosecute the second. The first suit was properly instituted; but their being some impropriety of conduct on the part of the solicitor, who instituted it on his own authority, and nominated his brother as next friend, the first bill was, upon an interlocutory application, dismissed without costs. *Starten* v. *Bartholomew.* vol. 6, p. 143

6. Where the Defendant submits to pay the whole demand of the Plaintiff, the Court stays the proceedings; but if there be a question in dispute as to the Plaintiff's right to recover certain expenses, and the Defendant does not submit thereto, the Court will not interfere summarily and stop the suit. *Field* v. *Robinson.* vol. 7, p. 66

7. A Defendant submitted to the claim of the Plaintiff except the costs of a *distringas.* The Court would not stay the proceedings till the question was agreed upon or determined. *Ibid.*

8. Where two suits are instituted on behalf of an infant, it is not of course, when one of such suits is in the paper for hearing, to refer it to the Master to ascertain which of the two suits is most beneficial for the infant. *Rundle* v. *Rundle.* vol. 11, p. 33

9. Motion to stay proceedings in a second suit until payment by the Plaintiff of the costs in the first which had been dismissed refused, it not appearing that the second bill could be produced by a fair amendment of the first. *Budge* v. *Budge.* vol. 12, p. 385

10. A Defendant offering the Plaintiff all the relief specifically sought by his bill, moved to dismiss the bill without costs, or that the Plaintiff might apply respecting them. The Plaintiff then insisted on a further demand, which might be had under the prayer for general relief or by amendment. The Court refused the motion with costs, but intimated that this proceeding must be considered at the hearing. *Hennet* v. *Luard.* vol. 12, p. 479

11. Where several suits for administration are attached to different Courts, and a decree is made in one, an application to stay the other suits ought to be made in the Court which has pronounced the decree. *Ladbrooke* v. *Bleadon*; *Brunton* v. *Bleadon*; *Barry* v. *Bleaden.* vol. 15, p. 457

12. Motion by Defendants to stay proceedings in a suit, upon certain terms, on the ground that the same questions were in issue in a suit instituted by them against the Plaintiffs in *Scotland*, and which the Court had refused to stay, refused with costs. *Stainton* v. *The Carron Company.* (No. 3.) vol. 21, p. 500

13. The common administration decree having been made in a suit by one of the next of kin, a second suit was instituted, six months after, by another next of kin, praying additional relief. The Court stayed the second suit, on the Defendant in the first undertaking not to object to any additions to the decree which the Judge in Chambers might think reasonable. *Gwyer* v. *Peterson*; *Peterson* v. *Peterson.* vol. 26, p. 83

14. When the matters in dispute have been disposed of by an independent proceeding, the Plaintiff may apply to stay proceedings, and the Court will then dispose of the costs. But where the suit has been dismissed against some of the Defendants for want of prosecution, the Court is no longer able to adjudicate as to the costs in the absence of the dismissed parties, and in default of prosecution, the bill will be dismissed in the usual way, with costs. *Troward* v. *Attwood.* vol. 27, p. 85

15. Time for the performance of a decree extended pending an appeal to the House of Lords, on the Appellant submitting to indemnify the Respondent against any loss. *Taylor* v. *The Midland Railway Company.* (No. 2.) vol. 30, p. 219

16. Two suits had been instituted on behalf of infants for the same purpose, and a decree had been obtained in the second. Upon motion to stay the first suit, the Court ordered it to be stayed, giving liberty to the next friend in the second to

apply for the conduct of the first. *Kenyon by Jones (next Friend)* v. *Kenyon.* vol. 35, p. 300

"STOCK."

[*See* DESCRIPTION OF GIFT, SPECIFIC LEGACY.]

1. The words "stock in the foreign funds," held, upon the terms of a will, to comprise all foreign securities for which the faith of the government of the foreign country was pledged. *Ellis* v. *Eden.* vol. 23, p. 543
2. *South Sea* Stock and 3*l.* 5*s.* per Cents.: Held, on the context, to pass by the expression "surplus money." *Newman* v. *Newman.* (No. 1.) vol. 26, p. 218
3. A testator bequeathed specific sums of *South Sea* Stock and 3*l.* 5*s.* per Cents. to his sister for her life, and, at her death, she left "this money in trust to her niece," to pay certain legacies, which did not exhaust the whole. She authorized her sister and niece (who were her executrixes) to sell out the residue of "her money" in the 3*l.* 5*s.* per Cents. over the sum she had mentioned, for payment of her debts, and proceeded: "then, if there is any surplus money, I give it to my niece." Held, that the niece took the surplus of both the funds. *Ibid.*
4. Stock in the funds, in which the testator has a reversionary interest, will not pass by a bequest of "my goods and furniture, my plate and linen, all money and notes that may be due to me at my decease." *Cowling* v. *Cowling.* vol. 26, p. 449

STOCK-BROKER.

[*See* SHARES (TRANSFER).]

1. The certificate of a stock-broker, of a fund standing in the bank, held insufficient evidence of that fact as between vendor and purchaser. *Hobson* v. *Bell.* vol. 2, p. 17
2. An executor, upon transferring stock to a legatee, paid one-sixteenth per cent. to a stock-broker for identifying him at the Bank. He was allowed the payment in passing his accounts. *Jones* v. *Powell.* vol. 6, p. 488
3. The Stock-Jobbing Act (7 *Geo.* 2, c. 8), only applies to "public" stocks and securities, and not to railway and joint-stock shares; and, therefore, as no penalty is attached to stock-jobbing dealings in such shares, a stock-broker is compellable to make full discoveries respecting them. *Williams* v. *Trye.* vol. 18, p. 366
4. A stock-broker held bound to discover the names of the persons for whom he had purchased shares in a joint-stock company which had neither been incorporated, chartered or registered, and which was regulated by no deed of settlement, and whose shares passed by delivery. *Re The Mexican and South American Company.* vol. 27, p. 474

STOCK IN TRADE.

[*See* SUBSTITUTED STOCK IN TRADE.]

STOPPAGE IN TRANSITU.

1. In equity, a transfer of goods for valuable consideration by a consignee for a limited purpose, does not destroy the consignor's right of stoppage *in transitu*, *ultra* the particular lien of the transferee. *Spalding* v. *Ruding.* vol. 6, p. 376
2. *A.* consigned goods of the value of 1,800*l.* to *B.*, who transferred the bill of lading to *C.* to secure 1,000*l.* *B.* having become bankrupt, *C.*, as *B.*'s factor, claimed, as against *A.*'s title to stop *in transitu*, a a right to retain the whole in satisfaction of a general balance due to him from *B.* Held, first, that he was not entitled beyond the 1,000*l.*; and secondly, that *A.*'s remedy against *C.* for the surplus was in equity. *Ibid.*
3. Stoppage *in transitu* is an ordinary legal right, as to which this Court, unless by reason of some unusual circumstances, will not interfere. *Straker* v. *Ewing.* vol. 34, p. 147
4. The Plaintiffs sold some coals to the Defendant, and shipped them for exportation, and the bill of lading was made out and delivered to the vendee's agent. The Plaintiff's, not having received payment, instituted a suit for an injunction and to obtain possession of the bill of lading, and they supported their equity by allegations of gross fraud, which were disproved. The bill was dismissed with costs, the Plaintiffs' remedy being by action against the purchaser for the price. *Ibid.*

STOP-ORDER.

1. The stop-order can only be granted either on an admission or proof of the incumbrance; and will not be granted "without prejudice to the validity of the charge." *Winchelsea* v. *Garrety.* vol. 1, p. 223
2. Parties obtaining stop-orders to be liable at the discretion of the Court to pay costs. *See* General Order, Ap. 3, 1841. vol. 2, p. xi
3. Stop-orders may be obtained without service of the petition upon the parties to the cause, or upon persons interested

in parts of the funds not sought to be affected. *Winchelsea* v. *Garrety*. vol. 2, p. xi

4. An incumbrancer on a portion of an undivided fund in Court cannot obtain a stop-order on it, without serving the other parties interested, with the petition for that purpose. *Trezevant* v. *Frazer*. vol. 3, p. 283

5. *A.* conveyed to *B.* his reversionary interest in a fund in Court, and *B.* obtained a stop-order. When the fund fell into possession, *B.* presented a petition for payment to him. On the hearing of the petition, *A.* insisted that the purchase was invalid, being a purchase of a reversionary interest at an undervalue. The Court would not decide the point, but proposed to retain the funds in Court for a limited time, if *A.* would undertake to file a bill to set aside the conveyance. *A.* not giving the undertaking, the fund was paid out to *B.* *Bethune* v. *Kennedy*. vol. 3, p. 462

6. Principles on which it was considered necessary, previous to the General Order of 3rd *August*, 1841, to serve all parties interested with an application for a stop-order. *Day* v. *Croft*. vol. 4, p. 34

7. Requisites for obtaining the stop-order under the General Order of *April*, 1841. *Wood* v. *Vincent*. vol. 4, p. 419

8. The assignor, though party to the cause, must be served with the petition for a stop-order. *Parsons* v. *Groome*. vol. 4, p. 521

9. Upon an application for a stop-order, the assignor's right to the fund in Court must be shewn either by the proceedings or by affidavit. *Quarman* v. *Williams*. vol. 5, p. 133

10. A judgment having been obtained against a party to whom a sum standing to the credit of the cause had been ordered to be paid, the Court, on the application of the judgment creditor, stayed the delivery to the debtor of the Accountant-General's cheques. *Robinson* v. *Wood*. vol. 5, p. 388

11. At the instance of the mortgagee of the reversion, the Court declined making a stop-order on deeds brought into the Master's office under a decree. *Cottm* v. *Cotton*. vol. 6, p. 96

12. A stop-order does not affect any right, and it is therefore unnecessary to specify that it is made "without prejudice." *Lucas* v. *Peacock*. vol. 9, p. 177

13. Stop-order directing that a tin box in Court, containing turnpike securities, should not be parted with without notice to the petitioner. *Williams* v. *Symonds*. vol. 9, p. 523

14. A petition for a stop-order was served not only on the assignor, but on the other parties to the cause. The petitioner was ordered to pay the costs of the latter. *Glaxbrook* v. *Gillatt*. vol. 9, p. 611

15. By the decree a sum in Court was directed to be paid to the Plaintiff. A person, not a party to the suit, claiming a portion of it as against the Plaintiff, applied for a stop-order, and, having shewn a sufficient *primâ facie* case, the Court ordered the fund to be retained, on the terms of his filing a bill within ten days to establish his right. *Feistal* v. *King's College, Cambridge*. vol. 11, p. 254

16. Though the Court will stay the payment of a fund out of Court for the purpose of giving a stranger the opportunity of enforcing his right against it, yet it will not, for the same purpose, order into Court a sum directed to be paid by one party to another. *Newton* v. *Askew*. vol. 11, p. 446

17. By the decree, an arrear of dividends on stock was ordered to be paid to the Plaintiff by her trustee. Shortly afterwards, such arrears were, under the 1 & 2 *Vict.* c. 110, s. 14, charged by a common law judge with the payment of a sum of money to *A. B.* A petition was presented by *A. B.* that the trustee might pay the amount into Court, and for a stop-order thereon. The petition was dismissed with costs. *Ibid.*

18. Priority obtained on a fund in Court by a *puisné* incumbrancer who had procured the first stop-order thereon. *Swayne* v. *Swayne*. vol. 11, p. 463

19. *A.*, who was entitled to a residuary fund in the hands of his father's army agents, charged it, first, to the agents, and afterwards to *M.* The agents voluntarily paid the whole fund into Court in an administration suit. *M.* obtained the first stop-order thereon. Held, that *M.* had priority over the agents. *Ibid.*

20. The Plaintiff's solicitor made an equitable assignment of the costs to which he would become entitled in the suit to a stranger to the cause. An order was afterwards made for taxation of the Plaintiff's costs, and for their payment to the solicitor out of a fund in Court. The solicitor became bankrupt before the creditor had obtained any stop-order or given notice of the assignment. Held, that costs were within the order and disposition of the bankrupt, and passed to his assignees. *Day* v. *Day*. vol. 23, p. 391

21. A first incumbrancer on a reversionary legacy gave due notice to the trustees. A fund was afterwards brought into Court to provide for the legacy, and a second incumbrancer obtained the first stop-order on it. Held, that he did not thereby obtain priority over the first incumbrancer. *Livesey* v. *Harding*. vol. 23, p. 141

22. The operation of a stop-order, whether

general or particular, is confined to the amount on which the order is founded. *Macleod* v. *Buchanan.* vol. 33, p. 284

23. *A.* purchased of *X.* one-seventh part of a fund in Court, and obtained a general stop-order on the whole fund. *A.* afterwards purchased another one-seventh of *Y.*, but obtained no further stop-order. *Y.* subsequently mortgaged to *B.*, for a pre-existing debt, the one-seventh which he had already sold and assigned, and two years afterwards *B.* obtained a stop-order on *Y.*'s share. Held, that *B.* had priority over *A.* in respect of *Y.*'s share. *Ibid.*

SUBMISSION TO PAY.

[*See* ADMISSION.]

Three directors who had signed a policy, filed a bill on behalf, &c., praying, on allegations of fraud and misrepresentation, that it might be delivered up to be cancelled, "or that they might otherwise be relieved therefrom, in such manner as the Court might think fit;" but the bill contained no offer to pay back the premiums. Held, that if such a submission were necessary, the prayer sufficiently implied it. *Barker* v. *Walters.* vol. 8, p. 92

SUBPŒNA.

[*See* SERVICE, SUBSTITUTED SERVICE.]

1. Practice, where a *subpœna* was served on a Defendant before the bill was filed (the cause not being an injunction cause). *Salmon* v. *Turner.* vol. 4, p. 518
2. A *subpœna* to appear and service thereof set aside and discharged with costs on the ground of an irregularity in the *teste*. *Lord Huntingtower* v. *Sherborn.* vol. 5, p. 162
3. Where the bill is amended before answer, it is not necessary to serve a *subpœna* to answer the amendments. *Stanley* v. *Bond.* vol. 6, p. 420
4. Where, at the hearing, a cause stands over, with liberty to amend, and the bill is amended accordingly, a new *subpœna* to hear judgment must be served. *Davis* v. *Prout.* vol. 7, p. 256
5. An order was made on the application of the Plaintiff that certain costs should be taxed and paid without stating to whom. The *subpœna* for costs directed them to be paid to the Plaintiff, and an attachment issued in the usual form. Held, regular. *Oldfield* v. *Cobbett.* vol. 12, p. 91
6. A *subpœna duces tecum* to produce and testify at the hearing will not be issued except to the extent of the old practice. *Hope* v. *Liddell.* vol. 20, p. 438
7. Upon a motion for a decree, a *subpœna duces tecum* to produce a document at the hearing does not issue as of course. *Chard* v. *Cox.* vol. 35, p. 191

SUBSTITUTED LEGACY.

[*See* GIFT TO A CLASS (SUBSTITUTION).]

1. A testatrix appointed a legacy out of a particular fund. By a codicil she revoked it, and gave a legacy of half the amount only, but without referring to the particular fund. Held, that the latter was a mere substitution for the former; and the particular fund failing, that the legatee was not entitled to be paid out of the general assets. *Bristow* v. *Bristow.* vol. 5, p. 289
2. A testator, by his will, gave two-thirds of his residue to his eldest son, with a gift over in case he died under twenty-five and unmarried; and he gave the remaining one-third to his second son, in similar terms. By a codicil, he revoked so much of his will as related to the distribution of his residue, and gave to his second son 20,000*l.* sterling, in lieu of his one-third of the residue, and he appointed his eldest son residuary legatee. Held, that the gift of the 20,000*l.* was absolute, and not subject to the same limitations as the one-third of the residue. *Alexander* v. *Alexander.* vol. 5, p. 518
3. By his will, a testator gave 20,000*l.* to his daughter for life, with remainder to her children, to be vested at twenty-one or death under that age, leaving issue. By a codicil, "instead of the 20,000*l.*," he gave 15,000*l.* to his daughter for life, with remainder to her children "or the survivors." Held, that the gift by the codicil was not substitutional, so as to make the limitations of it similar to those in the will, and therefore, that children who died after attaining twenty-one, in the life of the daughter, were excluded, as against the surviving children. *Haley* v. *Bannister.* vol. 23, p. 336
4. A testator bequeathed to his nieces 500*l.* owing to him from *A. B.*, and he directed that if his estate should not be sufficient to pay his legacies in full, they should (exclusive of that to his nieces) abate proportionably, and if it should be more than sufficient, they should be increased proportionably. The testator received the debt, and by a subsequent codicil, "in the place of the said intended legacy," gave his nieces 500*l.* to be paid out of his general personal estate. Held, that the second legacies were substitutionary, and subject to the same incidents, and that the nieces were not entitled to have them increased proportionably out of the undisposed-of estate. *Duncan* v. *Duncan.* (No. 2.) vol. 27, p. 392

5. A substituted bequest held subject to the same contingency as the original bequest. *Re Corrie's Will.* vol. 32, p. 426
6. Substituted gift in a codicil held to alter and adeem part of an inconsistent gift in the will. *Quentery* v. *Quentery.* vol. 33, p. 369

SUBSTITUTED SERVICE.

1. An order for service of a *subpœna* to appear and answer upon the Defendant's partners at the house of business, the Defendant himself being abroad, held, under the circumstances, to be regular. *Kinder* v. *Forbes.* vol. 2, p. 503
2. Substituted service of a *subpœna* to appear ordered in a creditor's suit on one, who, acting as the attorney of the executor and general devisee and legatee resident in *India*, had obtained administration here, and had entered into receipt of the rents of the real estate. *Weymouth* v. *Lambert.* vol. 3, p. 333
3. Substituted service of a *subpœna* to appear ordered in the case of an infant. *Lane* v. *Hardwicke.* vol. 5, p. 222
4. Substituted service of a *subpœna* ordered on the solicitor of a Defendant residing out of the jurisdiction. *Cooper* v. *Wood.* vol. 5, p. 391
5. Substituted service of an injunction ordered. *Kirkman* v. *Honnor.* vol. 6, p. 400
6. The order on a solicitor for payment to his client of a sum found due on taxation requires personal service; but, it appearing that the solicitor absented himself to avoid service, an order for substituted service was made. *In re Lloyd.* vol. 10, p. 451
7. A party having gone abroad to avoid service of an order for payment into Court, &c., substituted service was ordered at the last place of residence and on her solicitor. *Burlton* v. *Carpenter.* vol. 11, p. 33
8. In 1841 a Defendant appeared by his Six Clerk, and described himself as resident at *C.* After the abolition of the office of Six Clerk he stated no address for service, as required by the 20th General Order of *October*, 1842, and went to *America.* An application that service of all proceedings at *C.* should be deemed good service was refused. *Hughes* v. *Wheeler.* vol. 11, p. 178
9. An appearance was entered for the Defendant, and a traversing note filed. An order was made for service of it at his last place of residence. *Horlock* v. *Wilson.* vol. 12, p. 545
10. To obtain the successive orders (in a matter, and not in a cause) upon a person to pay a sum of money to a party, personal service of the preceding order, and a demand and refusal must be proved; but where the party avoids service, the Court will direct substituted service, and dispense with the necessity of a demand and refusal. *In re Mourilyan.* vol. 13, p. 84
11. A Defendant who had appeared by a solicitor in the original suit, but not in the supplemental suit, being in contempt, went to reside abroad. The Court ordered that service on the solicitor of the proceedings in the supplemental suit should be good service. *Scott* v. *Wheeler.* vol. 13, p. 239
12. Substituted service ordered of a writ of summons issued upon the Master's certificate upon a claim. *Baker* v. *Anthony.* vol. 14, p. 26
13. A Defendant, resident out of the jurisdiction, had given a general power of attorney to a solicitor to act for him. The Court ordered substituted service on the solicitor of an order to revive, and thereupon gave the Plaintiff leave to enter an appearance, and made a general order that service of all proceedings on the solicitor should be good service. *Forster* v. *Menzies.* vol. 16, p. 568
14. The principle upon which the Court acts, in directing substituted service, is to sanction such service as to afford a reasonable certainty that the Defendant will know of it. In a suit by infant natural-born subjects (out of the jurisdiction), by their next friend, to which their father and mother (the latter being also out of the jurisdiction) were Defendants, service under an order of a bill on the solicitor, who had acted for the mother in the institution of a suit in the Ecclesiastical Court against the father, was held to be good service. *Hope* v. *Hope.* vol. 19, p. 237
15. Personal service on a solicitor of proceedings under a taxation dispensed with, and service by placing under his door substituted. *Re Templeman.* vol. 20, p. 574
16. Application for substituted service of a *subpœna ad testificandum*, or, in the alternative, that a solicitor might produce his client before the examiner, refused. *Spicer* v. *Dawson.* vol. 22, p. 282
17. A company, though not formally dissolved, had practically ceased to exist, and had no office or officers. The company being made Defendants in a suit, the Court ordered that service of the bill on the late chairman and the secretary should be good service on the company. *Gaskell* v. *Chambers.* (No. 1.) vol. 26, p. 252

SUBSTITUTED STOCK IN TRADE.

1. A husband carried on the business of a victualler with stock, &c., which formed the separate estate of the wife; in carry-

ing on the business he disposed of the consumable stock, and substituted similar articles, and at a subsequent period he sold the stock and business. By the decree an account was directed against the husband of the stock comprised in the settlement and sold. Held, that the Master properly included the substituted stock in the account. *England* v. *Downs*. vol. 6, p. 269

2. *A.* died, and a considerable sum was due from his partner (*B.*) to his estate. *B.* continued the trade, with the assent of the executors, but at the end of six months they insisted on payment, or to have the business wound up; whereupon *B.* assigned to them his share in all the partnership assets, upon trust to pay the joint creditors and then the debt due to *A.*'s estate and the residue to *B.* Held, that the executors had no lien on the stock-in-trade substituted by *B.* for that sold during the six months. *Payne* v. *Hornby*. vol. 25, p. 280

SUCCESSION DUTY.

1. *A.*, the tenant for life, and *B.*, his nephew, and tenant in tail, entered into an arrangement, by which they barred the entail, and conveyed the property to such uses as they should jointly appoint, and subject thereto to the old uses. By a contemporaneous deed, in execution of the joint power, *A.* secured to *B.* a life annuity on the property, and *B.* secured 25,000*l.*, payable when he, *B.*, came into possession. Of this, 20,000*l.* was settled, contemporaneously, on *A.*'s daughters, and the remainder on *A.* Held, on the death of *A.*, in 1855, that succession duty (under the Act of 1853) was payable on the 20,000*l.* as a succession from *A.*, but that no succession duty was payable on the remaining 5,000*l.* *Re Jenkinson*. vol. 24, p. 64

2. As between the vendor and purchaser of a reversion, the purchaser held liable to bear the succession duty payable in respect of it. *Cooper* v. *Trewby*. vol. 28, p. 194

3. Upon a second marriage of a lady, her second husband settled his property on the children of her former marriage. Held, that the husband and not the wife was the predecessor, and that 10*l.* per cent. succession duty was payable. *In re Ramsay's Settlement*. vol. 30, p. 75

4. A tenant for life directed his executors to pay, out of a particular fund, his pecuniary legacies and annuities, "and the legacy and succession duty payable for the same or in consequence of his death." Held, that the succession duty payable by the next remainderman, under a prior settlement and in respect of family estates not devised, was charged on the fund. *Earl Poulett* v. *Hood*. vol. 35, p. 234

5. Legacy and not succession duty held payable on the produce of an estate of a testator sold by trustees. *Earl Howe* v. *Earl of Lichfield*. vol. 35, p. 370

6. All that the purchaser of devised real estates can require in respect of succession duty is, distinct evidence that no claim will be made by the Inland Revenue Office for any duty on the hereditaments sold by reason of the death of the testator. If the Inland Revenue Office distinctly state this, it is sufficient, and the office cannot be compelled to give a certificate in any particular form. *Ibid.*

SUCCESSIVE INTERESTS.

[*See* ABSOLUTE INTEREST, ACCELERATION, ACCRUER, REFERENCE (GIFT BY).]

A testatrix bequeathed the "interest" of a sum of money to her eldest child for life, "and afterwards to devolve in succession on her (the testatrix's) remaining children." Held, on the death of the eldest, that the others were entitled for life in succession, according to their priority of age. *Young* v. *Sheppard*. vol. 10, p. 207

SUFFICIENCY OF ANSWER.

1. It is not true as a general proposition that an insufficient answer is no answer. *Lane* v. *Paul*. vol. 3, p. 66

2. There is no rule, that a Defendant must answer affirmatively or negatively his own recent facts. All that the Court can do, is to compel a Defendant to afford such a discovery as he swears he is able to give. *Nelson* v. *Pomfret*. vol. 4, p. 41

3. A Defendant put in an insufficient answer; the Plaintiff obtained an order to amend, and that the Defendant might answer the exceptions and amendments together. Held, that the Defendant's answer to the amended bill was to be deemed sufficient at the end of two months, under the 4th Order of *April*, 1828, and not at the end of three weeks under the 6th amended Order of *April*, 1828 (see now Order xvi. 6). *Lloyd* v. *Clark*. vol. 6, p. 467

4. A bill alleged, that the Defendant had received certain sums from *B.* on behalf of the Plaintiff, and asked whether the Defendant did not, in fact, receive them, and whether on the Plaintiff's behalf, &c. The answer denied that the Defendant had received these sums on behalf of the Plaintiff. Held, that it was insufficient. *Jodrell* v. *Slaney*. vol. 10, p. 225

5. A substituted bequest held subject to same contingency as the orig... *Re Corrie's Will.*
6. Substituted gift in a c... and adeem part of an ... the will. *Quentery* v...

SUBSTITU...

1. An order fo... appear and ... partners at ... fendant hi... the circu... v. *Forb...*
2. Subst... pear... who... cu... r...

...ds, and must be dealt with in ...e way. *Clegg* v. *Edmonson.*
vol. 22, p. 125

...Defendant answering must answer ...lly, and he cannot, by denying the Plaintiff's title, refuse a discovery of the accounts consequential on a decree being made against him. *The Great Luxembourg Railway Company* v. *Magnay.*
vol. 23, p. 646

15. A railway company, under the advice of the chairman and directors, bought up another line, in which the chairman was principally interested, and the chairman was furnished with a number of paid-up shares to effect the object. In answer to a bill by the company, impeaching the transaction on the ground of suppression and misrepresentation and of ignorance on the part of the company of the chairman's interest, he insisted on the validity of the transaction on various grounds, and declined to set forth how he had dealt with the shares. Held, that this answer was insufficient. *Ibid.*
16. By the interrogatories of a bill, filed by a foreign merchant against his *London* agents, the Defendants were asked what were the powers and authorities given to them, and by what documents they made out the same. The Defendants stated, that the powers and authorities appeared from written correspondence, and that various letters had passed between the parties, to which they referred. Held, that the answer was insufficient, and that the Defendants were bound to specify the documents containing their powers and authorities. *Inglessi* v. *Spartali.*
vol. 29, p. 564

SUING ON BEHALF.

1. In a creditor's suit instituted by the Plaintiff on behalf of himself and all other creditors, the Defendant is entitled on motion, at any time before decree, to have the bill dismissed, on payment of the demand of the Plaintiff and his costs as between party and party; but if there be other Defendants, their costs must also be paid. *Pemberton* v. *Topham.*
vol. 1, p. 316
2. One of thirty-eight proprietors of a newspaper was appointed book-keeper, and received the moneys of the concern; a bill being filed against him for an account, &c. by twelve of the proprietors on behalf, &c. Held, that the remaining twenty-five were necessary parties. *Bainbridge and Others* v. *Burton.* vol. 2, p. 539
3. Liberty being given to amend, the bill was amended by striking out the names of several Co-Plaintiffs, and suing by one on behalf, &c. of the others. Held irregular: but the Court allowed the amend-

ment to stand, security being given for costs. *Fellowes* v. *Deere*. vol. 3, p. 353

4. The trustees of a turnpike road borrowed a sum of money from *A. B.* on the security of the tolls, and they assigned to him such proportion of the tolls as the sum advanced bore to the whole principal money advanced on the credit of the tolls. Held, that the other mortgagees of the tolls were necessary parties to a suit, by *A. B.* against the trustees, to obtain payment of arrears of interest out of the tolls to be received. *Mellish* v. *Brooks*. vol. 3, p. 22

5. Where a class of persons entitled is numerous, it is a question of convenience whether the Court will require them all to be made parties. *Harvey* v. *Harvey*. vol. 4, p. 215

6. One of a numerous class of residuary legatees permitted to sue on behalf, &c., in the absence of the greater portion of them. *Ibid.*

7. In a continuing partnership, if a few have an interest in a particular subject adverse to all the rest, a bill may be filed against the few, by one "on behalf, &c." *Richardson* v. *Hastings*. vol. 7, p. 323

8. In the case of an insolvent partnership not formally dissolved, a bill may be filed by one or more on behalf of the rest, against the governing body, to have the assets collected and applied towards the payment of the debts, without seeking to ascertain the rights and liabilities of the parties as between themselves, but leaving them open to future litigation. *Ibid.*

9. Twenty years ago, twenty-seven persons conveyed real and personal estate to trustees to sell, and to divide the produce. Held, that a bill might be filed by a few, on behalf, &c., against the trustees, to make them account; and that it was not necessary to make all the persons interested parties to the suit. *Smart* v. *Bradstock*. vol. 7, p. 500

10. Three directors who had signed a policy, filed a bill on behalf, &c., praying, on allegations of fraud and misrepresentation, that it might be delivered up to be cancelled, "or that they might otherwise be relieved therefrom, in such manner as the Court might think fit;" but the bill contained no offer to pay back the premiums. Held, that the board of directors, who managed the affairs of the company, were not necessary parties. *Barker* v. *Walters*. vol. 8, p. 92

11. Where a plaintiff by his bill prays the dissolution and winding up of a company, he cannot sue on behalf, &c. All the partners must be made parties. *Harvey* v. *Bignold*. vol. 8, p. 343

12. A party who comes in in a creditor's suit, intrusting the management of the suit to the Plaintiff, must, upon an application to review the proceeding, stand in the place of the Plaintiff, and in the absence of fraud, be bound by his knowledge. *Gwynne* v. *Edwards*. vol. 9, p. 22

13. A creditor's bill was filed by *A.*, on behalf of himself and other creditors, against *B.* and others. After decree the suit abated by the death of *B. C.*, his executor, filed a bill of revivor on behalf, &c., and the suit was revived. *A.* afterwards filed other bills, and the proceedings before the Master were attended by *A.* on behalf of the creditors at large. Held, that *C.* was not, by the fact of filing the bill of revivor on behalf, &c., incapacitated from compromising for his own benefit a claim on the estate. *Armstrong* v. *Storer*. vol. 9, p. 277

14. The directors of a railway company, for the purpose of increasing the traffic, proposed to guarantee certain profits, and secure the capital of an intended steam-packet company, who were to act in connection with the railway. Held, that in such a case, one of the shareholders in the railway company was entitled to sue "on behalf of himself and all the other shareholders, except the directors," who were Defendants, although some of the shareholders had taken shares in the steam-packet company. *Colman* v. *The Eastern Counties Railway Company*. vol. 10, p. 1

15. A club, composed of numerous members, was dissolved. Two of the managing committee possessed themselves of the assets, and applied them in winding up the affairs. Held, that they might be sued by one member "on behalf," &c. for an account of the moneys received and its application, and to bring back the balance, if any, without making the other members parties, and without seeking a general winding up of the concern. *Richardson* v. *Hastings*. vol. 11, p. 17

16. Where a bill is filed by some "on behalf, &c.," an injunction which restrains proceedings against persons not named parties to the record is irregular. *Armitstead* v. *Durham*. vol. 11, p. 556

17. The Directors of one incorporated Railway Company paid over its funds to another Railway Company, for purposes wholly unauthorized; and the latter received them with knowledge of the breach of trust. Held, on demurrer, that the second company were properly made parties to a suit to bring back the fund; and, secondly, that, in such a case, an individual shareholder in the first company might sue the second company "on behalf," &c., without alleging that the corporation of which he was a member had refused to sue. *Salomons* v. *Laing*. vol. 12, p. 377

18. In an amalgamated Railway Company, there were three classes of shareholders. A shareholder of one class filed a bill on behalf of himself and all others of the

class, stating that an unfair and unnecessary call had been corruptly made on that class, which some had paid, but that the Plaintiff had refused to pay it, and praying that an account might be taken to ascertain the propriety and necessity of the call, and for an injunction. Held, that this was an attempt to induce this Court to interfere in the internal management of the affairs of a continuing company, and a general demurrer to the bill was allowed. Held also, that the shareholders of the same class as the Plaintiff who had paid the call and the other two classes of shareholders ought to be represented. *Bailey* v. *The Birkenhead, Lancashire, and Cheshire Junction Railway Company.* vol. 12, p. 433

19. A bill was filed by a shareholder on behalf, &c., to prevent the directors making a part only of the railway, abandoning the rest, and for an indemnity. There were several classes of shareholders. Held, that it was not necessary that the several classes should he severally and separately represented on the record. *Dumvile* v. *The Birkenhead, Lancashire, and Cheshire Junction Railway Company.* vol. 12, p. 444

20. A bill on behalf of all shareholders complaining of transactions in which some have concurred, cannot be sustained, for there is a misjoinder. *Kent* v. *Jackson.* vol. 14, p. 367

21. The agreement having been made with a number of subscribers, held, that the proper mode of suing was, by some on behalf of all. *The Duke of Devonshire* v. *Eglin.* vol. 14, p. 530

22. The committee of a benefit building society authorized the vice-president to purchase a real estate for the society, and furnished him with part of the funds. He purchased but appropriated the estate to himself. Held, that the trustees, in whom the funds and property ought to be vested, were entitled to sue on behalf, &c., to compel a restitution of the estate. *Mullock* v. *Jenkins.* vol. 14, p. 628

23. Suit by a grantee of a rent-charge on behalf of himself and twenty others to raise the arrears by sale, sanctioned. *White* v. *James.* vol. 26, p. 191

24. A decree for foreclosure or for sale cannot be made in the absence abroad of a party entitled to one-third of the equity of redemption. The objection is not removed by the 15 & 16 *Vict.* c. 86. *Caddick* v. *Cook.* vol. 32, p. 70

SUIT (INSTITUTION OF).

[*See* FILING BILL, &c., JURISDICTION, PLEADING, RECORD.]

1. Where authority is given to take land for a public purpose, and pay the money into Court to be dealt with "on petition," the ordinary jurisdiction of the Court to proceed by bill is not excluded, and, therefore, a demurrer will not hold in such a case. *Hyde* v. *Edwards.* vol. 12, p. 160

2. There is no such general rule, that a wrong-doer cannot file a bill. Thereupon, if *A.* and *B.*, two trustees, have committed a breach of trust, and are equally liable, but *B.* received the produce, *A.* may sustain a bill against *B.* alone to recover the amount, for the benefit of the trust. *Baynard* v. *Woolley*; *Wearing* v. *Baynard.* vol. 20, p. 585

3. Demurrer allowed to a bill by a member of a municipal corporation, to restrain them from selling their estates, and for an account of the estates sold, his alleged rights being in his corporate and not his individual capacity. *Evan* v. *The Corporation of Avon.* vol. 29, p. 144

4. Conflicting claims were made as to a charge on the Plaintiff's estate. Held, that he might maintain a suit to have the rights determined and the estate cleared, and that he was also entitled to his costs of suit. *Vyvyan* v. *Vyvyan.* vol. 30, p. 65

5. A party having a mere possibility cannot maintain a suit respecting it. *Davis* v. *Angel.* vol. 31, p. 223

SUITORS' FUND.

1. Before the creation of the office of Accountant-General of the Court of Chancery, in 1725 (by stat. 12 *Geo.* 1, c. 32), the ushers of the Court used to receive and pay all moneys of suitors, and to take for their own benefit all profits made of the sums in their hands; but since 1725 such profits belong to the Suitors' Fund. *Trevor* v. *Blucke*, *Starismore* v. *Chiswell.* vol. 19, p. 373

SUMMONS.

[*See* ADMINISTRATION SUMMONS.]

SUPERSTITIOUS USES.

[*See* CHARITY.]

1. Establishments or foundations for securing prayers for the souls of the dead are deemed to be superstitious, and within the statute of 1 *Edw.* 6, c. 14. vol. 2, p. 151

The Court (without deciding whether directions to pray for the souls of the dead were or not unlawful, or prohibited by the church of *England*) held, that it might be properly deemed superstitious to create an establishment, or endow a foundation, to be continued in perpetuity and conducted with certain ceremonies supposed to be religious, for the purpose of securing the perpetual continuance of prayers for the souls of the dead, either alone or in connection with other observances, within the express terms of the

1 *Edw.* 6, c. 14. *Attorney-General* v. *Fishmongers' Company.* vol. 2, p. 151

2. The trust of a fund was, to pay the income to Roman Catholic priests for ever, upon condition of their saying masses for the repose of the soul of the founder. Held, void, and the fund was ordered to be paid to the representative of the founder. *In re Blundell's Trusts.* vol. 30, p. 360

SUPPLEMENTAL BILL.

[*See* ABATEMENT, REVIVOR.]

1. One of several Co-Plaintiffs mortgaged his interest and became insolvent pending the suit. A supplemental bill was filed by the other Co-Plaintiffs against the mortgagee and the provisional assignees alone. Held, that the Defendants in the original suit, who were accounting parties, ought also to have been made parties to the supplemental suit. *Feary* v. *Stephenson.* vol. 1, p. 42

2. The priorities of incumbrancers upon an estate were declared, and a receiver appointed with directions to keep down the incumbrances in a suit to which the first incumbrancer was not a party. The first incumbrancer filed a bill against the receiver and the several parties to the former suit, to establish his priority, and praying "that if necessary the second bill might be taken as supplemental to the first." The Plaintiff in the second suit moved for an injunction to restrain the receiver from making any further payments to the other incumbrancers. Held irregular, and that he ought to have applied in the first suit for leave to enforce his legal remedies. Held also, that the Court would not on this occasion determine whether this was to be taken as a supplemental bill. *Smith* v. *The Earl of Effingham.* vol. 2, p. 232

3. A notice of motion for liberty to file a supplemental answer should specify the new facts intended to be introduced, and a notice of motion for liberty to file a supplemental answer stating "*certain facts*" not regular. *Haslar* v. *Hollis.* vol. 2, p. 236

4. A testator who died in 1767, directed his estate to be converted and invested, and he gave the same to his wife for life, remainder to his daughter, with remainder to the Plaintiffs. The executors neglected to convert some leaseholds, and permitted the successive tenants for life to enjoy the same until their expiration. After their deaths the Plaintiffs filed their bill against the representatives of the executors for a general account. The executors, who had no personal knowledge of the matter, represented the residue to consist of a sum in the funds; and they, by their answer, amongst other papers, admitted the leases to be in their possession. At the hearing the Plaintiffs waived the accounts, and took the money in the funds. They afterwards discovered the breach of trust in respect of the leaseholds, and filed a supplemental bill to obtain relief in respect thereof. The Court, notwithstanding the former decree, decided in their favour, but without costs. *Mehrtens* v. *Andrews.* vol. 3, p. 72

5. A suit was instituted to have a bill of exchange delivered up, on the ground of fraud, and to restrain an action at law commenced thereon. Pending the suit, the Plaintiff in the action recovered, and obtained payment. Held, on demurrer, that the Plaintiff in equity might file a supplemental bill, stating these facts, and praying a repayment and indemnity. *Pinkus* v. *Peters.* vol. 5, p. 253

6. Upon an application to file a supplemental answer, the Defendant should state on his notice of motion the facts intended to be introduced therein. *Smith* v. *Hartley.* vol. 5, p. 432

7. A decree was made in 1830 against executors, charging them personally; in 1838 they obtained leave to rehear the cause. The Plaintiff in 1842 presented a petition for leave to file a supplemental bill, putting in issue new facts to support the personal decree against the executors. The Court refused the application with costs, on the ground that the facts appeared to be either without proof or to be immaterial, or else to have been so long known to the Plaintiff as to preclude him making them the foundation of the extraordinary relief prayed. *Acland* v. *Braddick.* vol. 5, p. 486

8. Liberty given to file a supplemental answer to correct a date in the original answer. *Bell* v. *Dunmore.* vol. 7, p. 283

9. On such an application the Defendant must account for the mistake, and the truth of the proposed answer, and the terms in which it is intended to file it must be verified. *Ibid.*

10. Leave given, after cause at issue and in the paper, to file a supplemental answer to correct an important date. *Fulton* v. *Gilmour.* vol. 8, p. 154

11. A Defendant insisted on his discharge under the Insolvent Act in 1835, in bar. After the cause was in the paper, he discovered that the discharge took place in 1836. A discharge in 1836 would be a good defence, but the discharge in 1835 would not. Permission was given to file a supplemental answer to correct the date. *Ibid.*

12. A Defendant asking leave to file a supplemental answer, must distinctly state the terms of the answer intended to be filed. *Ibid.*

13. A suit was instituted by legatees, whose interest (upon the happening of a contingency) might vest in the next of kin, against the executors alone. The next of kin were brought before the Court by supplemental bill. Held, that the executors were not improper parties to such supplemental bill. *Parker* v. *Parker*.
vol. 9, p. 144

14. A husband and wife joined as Co-Plaintiffs in a suit, in which the claim put forward was by the husband in right of his wife. He became bankrupt, and afterwards the wife alone filed a supplemental bill, stating a settlement (suppressed in the original bill), whereby the property had been settled to her separate use. Held, that she was entitled to relief; but only on the terms of her next friend consenting to become liable for the costs of the former proceedings, and paying the *extra* costs occasioned by the suppression of the settlement. *Howard* v. *Prince*. vol. 10, p. 294

15. Residuary legatees filed a bill against the executor, charging him with wilful default, for which some grounds appeared by his answer. No evidence was entered into, and the common accounts were directed. The widow, who was a Defendant, and was interested in the estate, afterwards filed a supplemental bill without leave to charge the executor with wilful default. Held, that the proceeding was regular, and a decree was made supplemental to the former proceedings. *Berrow* v. *Morris*.
vol. 10, p. 487

16. *A.* mortgaged to *B.*, who filed a bill of foreclosure, and *B.*, pending the suit, assigned to *C.*, who mortgaged to *D.*, and became insolvent. *D.* filed a supplemental bill to have the benefit of the suit for foreclosure. Held, that he was entitled to such relief. *Coles* v. *Forrest*.
vol. 10, p. 552

17. The Plaintiff claimed to be an incumbrancer on certain real estates, and there being outstanding terms, he filed his bill against the other parties interested in the property, to make his security available. By the decree the bill was retained for twelve months with liberty to the Plaintiff to proceed at law touching the matters in question in the cause, and the Defendants were restrained from setting up the outstanding terms, and from pleading the Statute of Limitations. The Plaintiff brought an action of ejectment, which was defended by one of the Defendants and also by the occupying tenants; and the latter, not being parties to the suit, set up the outstanding terms and the Statute of Limitations, and thus defeated the Plaintiff in the action. The Plaintiff then filed a supplemental bill detailing what had taken place at law, and praying to be let into possession, and that on any new trial the Defendants might admit that the Plaintiff's title accrued within twenty years. Afterwards the original decree was affirmed by the Lord Chancellor. The supplemental bill was brought on for hearing before the Master of the Rolls. Held, that the proceeding was irregular, and the supplemental bill was dismissed with costs. *Smith* v. *The Earl of Effingham*.
vol. 10, p. 589

18. At the hearing, it was objected, that the matters contained in a supplemental bill ought to have been brought forward by amendment; but held, that whatever weight might have been due to the objection, if brought forward at a proper time, and in a proper manner, it could be of no avail when brought forward for the first time at the hearing. *Rice* v. *Gordon*. vol. 11, p. 265

19. One of many incumbrancers on an estate filed a bill against the owner, and one only of the other incumbrancers, *D.*, to have an account of the incumbrances and their priorities ascertained. A decree was made, directing a reference to ascertain the different incumbrancers and their priorities, and the Plaintiff was to bring them before the Court. The Master made his report, finding the other charges, and rejecting the claim of *D.*, who took exceptions. The Plaintiff neglected to bring the other incumbrancers found by the Master before the Court, and the exceptions were ordered to stand over, with liberty to the Plaintiff to file a supplemental bill against all necessary parties. The Plaintiff accordingly filed a supplemental bill against *D.*, and the other incumbrancers, contesting the validity of the securities found by the Master, and seeking as against *D.* relief different from that sought by the original bill. Held, first, that the supplemental bill was irregular, and that so far as it sought to impeach the incumbrances found by the Master, and so far as it sought against *D.* relief different from that prayed by the original bill, it ought to be dismissed with costs. Secondly, that *D.* had a right in the second suit to impeach the Plaintiff's securities, although he had not done so in the original suit. Thirdly, that the other incumbrancers had a right to contest the Plaintiff's security, although at the hearing the Plaintiff admitted their priority. And lastly, an action was directed to try the validity of the Plaintiff's securities. *Hele* v. *Lord Bexley*. vol. 11, p. 537

20. The Plaintiff, in a supplemental bill, set out, at considerable length, the statements of the original bill. Held, that he

ought to pay the costs of any unnecessary statements to be determined by the Master. *Horsley* v. *Fawcett*.
vol. 11, p. 565

21. A fund was bequeathed to *A.* for life, with remainder to her surviving children. In a suit to which no child was a party, the fund was inadvertently ordered to be carried over to the separate account of *A.*, and was afterwards settled with the approbation of the Court, and paid out to the trustees of the settlement, but no declaration of right was made. Held, that the matter might be set right by a supplemental bill of the children, and that neither a rehearing of the orders nor a bill of review was necessary. *Noble* v. *Stow*. vol. 29, p. 409

SUPPRESSION.

[*See* SPOLIATION.]

SURETY.

[*See* MORTGAGE (WIFE'S ESTATE).]

1. *A.* agreed to become a surety for *B.* in a joint and several bond to *C.*, and *B.* was to give a counter bond of indemnity to *A.* The bond to *C.* was executed by *A.* only; but *B.* executed the counter bond to *A.* Held, that *A.*, the surety, was released.

A. gave to *C.* a promissory note, as surety for *B.*, upon an agreement that *C.* should advance the amount to *B.* by draft, at three months' date. *C.* made the advance immediately to *B.*, and not by draft at three months. Held, that the surety was released. *Bonser* v. *Cox*.
vol. 4, p. 379

2. A creditor sued his principal debtor, and recovered a judgment against him and the bail in the action. The surety thereupon "paid and satisfied" to the creditor the amount of the judgments, &c., and took an assignment thereof. Held, that the judgment was discharged, and that the surety could not recover on the judgment against the bail. *Armitage* v. *Baldwin*. vol. 5, p. 278

3. *A.* became surety for *B.* to *C.* for a sum "for value received by a draft at three months' date." *C.* (without the concurrence of *A.*) at once paid the amount to *B.*, instead of giving the draft at three months. Held, that the agreement had been varied, and that the surety was therefore discharged. *Bonser* v. *Cox*.
vol. 6, p. 110

4. *A.* and *B.* were obligors in a *joint* bond: *A.*, who was alleged to be the principal debtor, died. Held, that his assets were not in equity liable upon the bond, but that the liability survived to *B.* *Richardson* v *Horton*. vol. 6, p. 185

5. One of the two sureties who had joined the principal debtor in a bond, filed a bill to set aside the transaction on the ground of fraud, and prayed an account of the payments of the bond. Held, that the principal debtor and the co-surety were necessary parties, notwithstanding the 32nd Order of *August*, 1841. (Ord. vii. 2.) *Allan* v *Houlden*. vol. 6, p. 148

6. Surety by a promissory note, for a floating balance due to bankers from a customer, held released by the bankers crediting the customer with the full amount of the note without advancing the money at the time. *Archer* v. *Hudson*.
vol. 7, p. 551

7. Husband and wife mortgaged their respective estates for securing the husband's debt. Both estates were sold and conveyed free from the mortgage, and in 1832 the debt was paid out of the produce of the wife's estate. In 1841 a bill was filed to have the amount recouped out of the produce of the estate of the husband which was in Court. Held, that the representative of the wife was not entitled to interest on the amount paid. *Lancaster* v. *Evors*. vol. 10, p. 266

8. *A.*, as surety to a firm, signed a joint and several bill of exchange, on the faith that *B.* would join as co-surety. *B.* never signed it, but *A.* was afterwards compelled to pay it, by proceedings at law, at the suit of an indorsee. Held, that the firm were not entitled to avail themselves of the bill, and were liable to repay the amount and the costs of the proceedings both at law and equity. *Rice* v. *Gordon*. vol. 11, p. 265

9. Sureties are not discharged by giving of time to the principal debtor in cases where the remedies against the sureties are expressly reserved. *Owen* v. *Homan*.
vol. 13, p. 196

10. A mortgage security was given by *A.* and *B.* his surety, to *C.* for, amongst others, a sum which the deed represented that *C.* was liable to *D.* as surety for *A.* and *B.* or one of them. *C.* was morally but not legally bound to *D.* Held, that *B.* was not liable on this security for the debt due to *D.* *Lake* v. *Brutton*.
vol. 18, p. 34

11. The Defendants lent *A. B.*, at the same time, two sums of 2,000*l.* and 3,000*l.* on distinct securities, and the Plaintiff was surety for the first sum. Held, that the Plaintiff, on paying the 2,000*l.*, was not entitled to have a transfer of the securities held for that sum until the Defendants had also been paid the 3,000*l.* *Farebrother* v. *Wodehouse*. vol. 23, p. 18

12. Surety, by subsequent dealing with the creditor, held to have become a principal. *Reade* v *Lowndes*. vol. 23, p. 361

13. Judgment having been obtained against *A. B.*, a surety, he entered into a new

arrangement with the creditor (irrespective of the principal debtor), by which execution was not to issue while he kept up certain policies for securing the debt. Held, that *A. B.* became principal, and not surety, by the new arrangement, and that no subsequent dealing between the creditor and principal debtor would annul it. Therefore, the creditor having afterwards taken the principal debtor in execution, and discharged him without payment, held, that *A. B.* was not thereby released. *Reade* v. *Lowndes.* vol. 23, p. 361

14. The Plaintiff was surety, upon a promissory note to the Defendants, for a sum lent by them to their tenant, and the Defendants also took a mortgage of the tenant's furniture for the same debt. They afterwards, under a distress, took the same furniture for an arrear of rent. Held, that, as regarded the Plaintiff (the surety), the produce of the furniture was first applicable to the payment of the promissory note, and that the landlords could not, as against the surety, apply it in payment of the rent. *Pearl* v. *Deacon.* vol. 24, p. 186

15. A surety is entitled to the benefit of all securities taken by the creditor, whether he has notice of them or not. *Ibid.*

16. A surety for a mortgagor, who pays part of the mortgage, is entitled, as against the mortgagor, to a charge on the estate. *Gedye* v. *Matson.* vol. 25, p. 310

17. *A.* was tenant for life of lots 1 and 2, to which *B.* was entitled in remainder. *B.*, and *A.* as his surety, mortgaged lot 2, *B.* alone covenanting to pay. By a contemporaneous deed, *B.* conveyed his interest in the other lot on trusts to indemnify *A.* as his surety. *A.* paid large sums for interest on the mortgage. Held, that he was entitled to the benefit of the deed of indemnity only, but not to stand in the place of the mortgagee on lot 1. *Cooper* v. *Jenkins.* vol. 32, p. 337

18. A surety who pays off a debt for which he became answerable is entitled to all the equities which the creditor could have enforced, and that, not merely against the principal debtor, but also against all persons claiming under him. *Drew* v. *Lockett.* vol. 32, p. 499

19. *A.* mortgaged his estate to *C.*, and *B.* became *A.*'s surety for the debt. Afterwards *A.* mortgaged the estate to *D.*, who had notice of the first mortgage. The first mortgage was subsequently paid off, partly by *B.*, the surety, but *D.* got a transfer of the legal estate:—Held, that the surety had still priority over *D.* for the amount paid by him under the first mortgage, as surety for *A.* *Ibid.*

20. A surety who makes his estate liable for an annuity, although he incurs no personal obligation to pay it, is a "grantor" within the *53 Geo.* 3, c. 141, s. 10. *Thompson* v. *Cartwright.* vol. 33, p. 178

21. *A.* was indebted to *B.* in two sums of 1,000*l.* each, for one of which *S.* was surety. *B.* afterwards obtained from *A.* a life policy as a security for both debts. *A.* subsequently became bankrupt, and *B.* proved for 1,500*l.* on the two debts, and he received a dividend of 97*l.* and a sum of 97*l.* 10*s.* upon the surrender of the policy. Held, first, that by surrendering the policy the surety was not released; and secondly, that the surety was only liable for half the debt proved, after deducting half the dividends and half the produce of the policy. *Coates* v. *Coates.* vol. 33, p. 249

22. An executor, being surety for his testator, paid the debt after the testator's death:—Held, that he had a right to retain his debt in preference to the other creditors of equal degree. *Boyd* v. *Brooks.* vol. 34, p. 7

23. As between principal and surety, if the primary security prove worthless, whether it was so originally or whether it becomes so afterwards, the surety is not discharged, unless the loss or deficiency of the original and primary security was occasioned by the act of the creditor. *Hardwick* v *Wright.* vol. 35, p. 133

SURPLUS LANDS.

[*See* LANDS CLAUSES ACT.]

1. An act of parliament gave a corporation compulsory powers of purchasing land to make a market. The 29th section required it to sell the surplus not wanted, and to give certain parties a right of preemption, the produce to be applied "to the purposes of the act." The 30th section gave the corporation power to borrow on debenture, the 32nd power to mortgage or sell any of its land "for the purposes of the act," and the 33rd section provided that the act should not empower the corporation to sell without the approbation of the lords of the treasury. Held, that the 32nd section did not authorize a mortgage of the surplus land for the purposes of the act, but that it must be sold as directed by the 29th section. Held also, that a mortgage only of the lands of the corporation required the assent of the lords of the treasury. *De Winton* v. *Mayor of Brecon.* vol. 26, p. 533

SURPRISE.

The dates of the proceedings were as follow: action 30th of *June*, declaration 12th of *July*, plea 6th of *August*, notice of trial 25th of *November*, bill filed 26th

of *November*, motion to extend injunction 21st of *January* following. The motion stood over for an arrangement without prejudice, and with an understanding that the answer should not be pressed for; the negotiation terminating on the 7th of *June*, and the motion was renewed on the 19th of *June*, the trial being fixed for the 22nd. The Court thought, that if the case was to be decided as on the 21st of *January*, the motion ought to be refused; but that, as matters now stood, the Plaintiff was taken by surprise, and the motion was granted. *Bewley* v. *Hancock*. vol. 13, p. 75

SURVIVOR.

[*See* GIFT TO A CLASS (SUBSTITUTION), JOINT TENANCY, PRESUMPTION.]

1. A testator having given property to his wife while unmarried, and after her decease to his children "then living:" Held, that the children living at that time alone would take, unless it appeared upon the construction of the whole will, and to effectuate a clear intention appearing in other parts of it, that the words "then living" ought to be rejected as repugnant, or to be qualified in order to give effect to other words inconsistent with them. *Tawney* v. *Ward*. vol. 1, p. 563

2. Bequest to one for life, with remainder over to two others, with a clause of survivorship "if one or the other (of the latter) should die." Held, that the survivorship had reference to the death of the tenant for life, and not to that of the testator; and one of the remaindermen having survived the testator, but predeceased the tenant for life, the survivor was held entitled to his share by survivorship. *Whitton* v. *Field*. vol. 9, p. 369

3. Bequest to *A.* for life and, "at her decease, to her surviving children," when they have attained twenty-one. Held, that the survivorship had reference to the death of *A.*, and that those children only who survived her were entitled. *Huffam* v. *Hubbard*. vol. 16, p. 579

4. A testator devised property to trustees, for the maintenance of his four children, until they severally attained twenty-five, at which time he devised "unto such of his said children as should attain that age," one-fifth of the property to hold to them and their heirs. There was a gift over to the "survivors or survivor," if any died before attaining twenty-five and left no issue, or if they should die after attaining twenty-five and should leave no lawful issue. Held, that the words "survivors or survivor" was not to be read "other or others." *Stead* v. *Platt*. vol. 18, p. 50

5. Bequest to *A.*, and on her death, to her children, if they should attain twenty-one; if not, to *A.*'s surviving sisters. Held, that the survivorship had reference to the period at which the gift to the children failed. *Carver* v. *Burgess*. vol. 18, p. 541

6. Devise of real estate to three daughters for life, and after their decease to three grandchildren as tenants in common in fee; and in case of either of the grandchildren dying in the lifetime of the daughters, the share of them so dying to be "transferred" to the "survivors," and if only one should be living, then to him or her so "surviving." The survivor of the daughters outlived the three grandchildren. Held, that the survivorship had reference to the death of the last tenant for life and not to a survivorship between the grandchildren; that the divesting clause never took effect, and that on the decease of the survivor of the three daughters the heirs of the three grandchildren took as tenants in common in fee. *Littlejohns* v. *Household*. vol. 21, p. 29

7. Bequest to four persons equally, and "in case of the death" of any or either of them "in the lifetime of the other or others," their shares to go to "survivor or survivors of them." Held, that the survivorship had reference to the period of the testator's death. *Howard* v. *Howard*. vol. 21, p. 550

8. Whether the rule, that under a gift to one for life, and afterwards to the survivors of a class, the survivorship has reference to the period of enjoyment applies to real estate, *quære*. But held, the question did not arise upon a devise to four, to hold as tenants in common, during their lives, with benefit of survivorship, inasmuch as the survivorship had reference to the extent of the estate, and not to the class of persons. *Haddelsey* v. *Adams*. vol. 22, p. 266

9. Gift of residue in trust for testator's wife during widowhood, and on her death or marriage, to pay it amongst his five children, or the "survivor or survivors" of them, at such ages as his wife should appoint, or in default at twenty-one. But in case of the death of any before his share should become "payable" leaving issue, then to pay his share to such issue. A child attained twenty-one, and died in the life of the tenant for life, leaving issue. No appointment having been made, Held, the survivorship had reference to the cesser of the wife's estate, and that the issue, and not the representatives of the child, took the share. *Hind* v. *Selby*. vol. 22, p. 373

10. After certain bequests for life, the general residue was (in effect subject thereto) bequeathed to the surviving

children of *A.*, who was living. Held, that the survivorship had reference to the death of the testator. *Lill* v. *Lill.*
vol. 23, p. 446

11. Bequest, after a life estate, to *A.*, *B.* and *C.* equally, "or in case of the demise of each or either of them, to be divided between the survivors or survivor, or their representatives." All three died in the life of the tenant for life. Held, that this being an alternative gift, their representatives were entitled to the fund. *Page* v. *May.* vol. 24, p. 323
(Overruling *M'Donald* v. *Brice.*
vol. 16, p. 581)

12. Survivorship as to a class, in a gift after the death of the tenant for life, referred to the death of the testator and not to the death of the tenant for life. *Evans* v. *Evans.* vol. 25, p. 81

13. On a gift, after a tenancy for life, to a class equally, with benefit of survivorship, upon their severally attaining twenty-one, the survivorship was held to refer to the attaining twenty-one, and the representatives of one who attained twenty-one, but died in the lifetime of the tenant for life, were held entitled to a share. *Knight* v. *Knight.* vol. 25, p. 111

14. Gift to *A.* for life, and afterwards to seven named persons, equally, "the share of each who shall happen to die to be equally divided amongst the survivors unless *A. M. P.* [one of them] should die leaving children; in that case, I mean that her children should inherit the share of the parent." The seven all died before the tenant for life, *A. M. P.* being the survivor of them. Held, that the seven took equally. *Cambridge* v. *Rous.*
vol. 25, p. 409

15. A testator devised freeholds to two and their heirs as tenants in common, and in case either should die without leaving lawful issue surviving her, then he devised her part "unto the survivor." Held, that "survivor" was to be read in its ordinary sense, and not in the sense of "other." *Greenwood* v. *Percy.*
vol. 26, p. 572

16. A testator gave some property to his wife for life and proceeded thus:—"At the decease of my wife, I leave the last-named sum to be equally divided between the families of my two brothers, viz. one half to the widow and children of my deceased brother *John Bennett*, the widow, if surviving, to have an equal share with the children. Held, that the survivorship had relation to the death of the tenant for life and not of the testator; and, secondly, that the children took in joint tenancy. *Hesketh* v. *Magennis.* vol. 27, p. 395

17. Bequest of a fund to three granddaughters in equal shares for their respective lives, and afterwards to their respective issue; and in case any of the three should die without issue, her share to accrue and survive to the survivors, and the accrued shares to be subject to the same conditions. Held, that the survivorship as to each share had reference to the death of each granddaughter, and that on the death of the last surviving granddaughter without issue, her share fell into the residue. *Nevill* v. *Boddam.* vol. 28, p. 554

18. In a gift over, upon the death of any of a class without leaving issue, to the "survivors," the word "survivors" was construed "others," in consequence of the ultimate gift over being only to take effect on the death of "all" the class without issue. *Holland* v. *Allsop.*
vol. 29, p. 498

19. A testator bequeathed a house, described as copyhold, to his wife for life, "and at her death to be disposed of for the benefit of his surviving children, share and share alike." The house was, in fact, leasehold. Held, that only those children who survived the widow were entitled to share in the proceeds of the house. *Thompson* v. *Thompson.*
vol. 29, p. 654

20. A fund was settled by deed in trust for *A.* for life, and then for her children, and in default of children to *B.*, "if then living;" but in case of *B.*'s death before A., in trust for "the surviving children" of *B.* by her deceased husband. Held that the survivorship had reference to the death of *A.* *Reid* v. *Reid.*
vol. 30, p. 388

21. A testator bequeathed his residue to his widow for life, with remainder to his nephews and nieces living at her decease, and he substituted their children for any who should die in her life. But if any of the nephews and nieces should die in the life of the wife without having any child "then living," he directed his share to go to the survivors of the nephews and nieces. A nephew died without children, in the life of the widow. Held, that his share did not go to the survivors at his death, but the survivors at the death of the widow. *Essex* v. *Clement.* vol. 30, p. 525

22. The rule of law, as laid down by modern authorities, is, that the word "survivors" is to be confined to its literal signification, of survivors at the period spoken of by the testator, in every case where it is possible to do so without violating the clear meaning of the rest of the will. *In re Keep's Will.*
vol. 32, p. 122

23. The word "survivors" of nieces construed "others," in consequence of the gift over and of the subsequent part of

the will referring to the "issue" of a deceased niece participating in an accrued share. *In re Keep's Will.* vol. 32, p. 122

24. Bequest to *A.*, and at his death (with certain exceptions) to *B.*, and "at her decease" to be divided amongst four named persons, "or as many of them as may be living:" Held, that those only took who survived both *A.* and *B.* *Knight* v. *Poole.* vol. 32, p. 548

25. The word "survivor" cannot be construed as "others," where the gift over is partly to persons whose interests are not given over. *De Garagnol* v. *Liardet.* vol. 32, p. 608

26. A testator gave legacies to each of his four daughters for life, with remainder to their children; and he provided, that if either of the daughters should die without children, her share should go over to the survivors of his sons and daughters. Held, that "survivors" could not be read "others," in consequence of the gift over being to a different class from those whose shares were to go over. *Ibid.*

27. Construction of a bequest to the survivors of a class after the death of two successive tenants for life. *Drakeford* v. *Drakeford.* vol. 33, p. 43

28. A testator bequeathed his funded property to his widow for life, and afterwards to his brother for life, and then to be equally divided amongst his brother's "surviving legitimate children and my niece *R. W.*" Held, that the survivorship had reference to the death of the brother only. *Ibid.*

29. Under a devise of real and personal estate to the widow for life, and afterwards to the testator's four children "or" their children, share and share alike; and if any of such children should die without leaving a child, his share was to be divided between "the survivor or survivors" of them "or" their children: Held, that "or" could not be read as "and," nor "survivors" as "others," and that the effect of the gift was to substitute children for their parents who died in the life of the tenant for life. One child died in the life of the tenant for life without issue, and at the death of the latter the three other children and several grandchildren were living: Held, that the three children took exclusively as tenants in common. *Blundell* v. *Chapman.* vol. 33, p. 648

30. Bequest to *A.* for life, and afterwards to the testator's brothers and sisters, share and share alike, or their children in case of their decease. Held, that the children of a brother, who survived the testator, but died in the life of the tenant for life, were entitled. *Bolitho* v. *Hillyar.* vol. 34, p. 180

31. The rule, as settled by modern authorities, is, that the word "survivor" is to be construed strictly, and is not to be read "other," unless the rest of the will should render the more liberal and less literal construction essential for the purpose of carrying into execution the objects expressed by the will. *Hodges* v. *Foot.* vol. 34, p. 349

32. A testator gave one-third of his real and personal estate to each of his three daughters for life, and after their respective deaths to their respective children. But in case any or either of the three daughters should die without leaving any child, or if all should die under twenty-one then the share of the daughter "so dying should be for the separate use of the surviving daughter or daughters and their children *per stirpes.*" Held, that "surviving" ought to be construed "other." Consequently, one having died leaving children in 1803, and a second in 1837 leaving a child, and the third in 1864 leaving no child, it was held that the share of the last was divisible *per stirpes* amongst the children of the two former. *Ibid.*

33. Legacy to *A.* for life, and at her death to be equally divided between her two sons (who were named) or given to the survivor of them. Held, that the survivorship had reference to the death of the tenant for life. *Naylor* v. *Robson.* vol. 34, p. 571

34. Under a bequest to two successively for life, with remainder to the survivors of a class: Held, that the survivorship had reference to the death of the last tenant for life. *Re Fox's Will.* vol. 35, p. 163

35. The words "survivors and survivor" of parents construed strictly, although the children of some of them took an interest in remainder. *Re Usticke.* vol. 35, p. 338

36. The meaning of the word "survive," in a limitation of property, is, that the person to survive shall be living at the time of the event which he is to survive; it does not mean continuing to live after the event referred to. Consequently, a gift over, if there should be no child or remoter issue of *A. B.* who should survive the testator and *A. B.*, and should live to attain twenty-one, is not void for remoteness. *Gee* v. *Liddell.* (No. 4.) vol. 35, p. 658

SWEARING AFFIDAVIT.

1. Depositions suppressed after publication, on the ground that one of the commissioners was the nephew and agent of the Plaintiff. *Lord Mostyn* v. *Spencer.* vol. 6, p. 135

2. The fact of publication having passed, or the death of the witness, will not prevent the suppression of the depositions,

when the commissioner is disqualified by interest, provided the application be made within a reasonable time after the discovery of the objection. *Lord Mostyn* v. *Spencer.* vol. 6, p. 135

3. Depositions suppressed after publication, on the ground that one of the commissioners was the nephew and agent of the Plaintiff. *Ibid.*

4. An affidavit was sworn before a Master Extraordinary in Ireland, appointed under the 6 & 7 *Vict.* c. 82. Held, that it was not necessary to verify by affidavit the fact that he filled that character. *Day* v. *Day.* vol. 11, p. 35

TACKING.

1. Since the 3 & 4 *Will.* 4, c. 104, a mortgagee of copyholds may tack a simple contract debt to his mortgage debt, as against the customary heir or devisee, but not as against specialty creditors. It seems also that a mortgagee may tack a simple contract debt to his mortgage debt as against the heir, devisee or executor, wherever the equity of redemption is assets in their hands for payment of simple contract debts. *Rolfe* v. *Chester.* vol. 20, p. 610

2. A mortgagor died, having made his real estate equitable assets. Defendants, who were both mortgagees and bond creditors, were held not entitled to tack. *Irby* v. *Irby.* vol. 22, p. 217

3. A mortgagee may tack simple contract debts to his mortgage as against the heir where the property descended is assets in his hands for payment of simple contract debts, and consequently since the stat. 3 & 4 *Will.* 4, c. 104, a mortgagee of freeholds may tack his simple contract debt as against the heir. *Thomas* v. *Thomas.* vol. 22, p. 341

4. Where two properties are mortgaged by *A.* to *B.* for distinct sums, and *C.* is surety for one only, the right of *B.* to retain all the securities until repaid both debts, overrides the right of *C.* to have the benefit of the securities for that debt for which he is surety. *Farebrother* v. *Wodehouse.* vol. 23, p. 18

5. The owner mortgaged first to *A.*, secondly to *B.*, and he then conveyed to *C.* "in trust" to sell and pay *A.* and a debt due to *D.*, and another due to *C.* and the residue to the owner. *C.* who had no notice of *B.*'s mortgage, afterwards got a transfer of *A.*'s mortgage, and with it the legal estate. Held, that *C.* was entitled to tack the third charge to the first mortgage, and exclude *B.* *Spencer* v. *Pearson.* vol. 24, p. 266

6. Two sums were due to *A.* from *B.*, one on mortgage of lands, and the other by covenant. *A.* having brought action for both sums, *B.* paid the amount due on the mortgage into Court. *A.* took this sum out of Court, and he proceeded in the action and recovered a judgment on the covenant. Held, that the mortgage having been satisfied before the judgment had been obtained, *A.* had no right to tack his judgment. *The Mayor, &c. of Brecon* v. *Seymour.* vol. 26, p. 548

TAKING BILL OFF THE FILE.

[*See* AUTHORITY TO SUE, SCANDAL, SOLICITOR.]

A bill containing offensive statements ordered, by consent, to be taken off the file. *Jewin* v. *Taylor.* vol. 6, p. 120
(*Clifton* v. *Bentall.* vol. 9, p. 105)

TAXATION.

[*See* ABSTRACT, COSTS, ORDER (EX PARTE), TAXATION (BY THIRD PARTY), TAXATION (COSTS OF), TAXATION (ITEMS), TAXATION (SPECIAL AGREEMENT), TAXATION (SPECIAL CIRCUMSTANCES, TAXING MASTER (DISCRETION).]

1. An application in a cause, by a client, to tax a solicitor's bill, need not be set down before the judge to whose Court the cause is attached. *Robins* v. *Mills.* vol. 1, p. 227
(See *Re Vines and Hobbs.* vol. 12, p. 489)

2. A client deposited with his solicitor the title-deeds of an estate, to secure a sum of money then due, and certain costs then incurred; the Court, on the petition of the client, ordered the deeds to be delivered up to the client, on his paying into Court a sum sufficient to cover the solicitor's claim, and directed the usual taxation. *Mills* v. *Finlay.* vol. 1, p. 560

3. This Court has authority to refer for taxation the bill of costs of a solicitor who acts as agent for another. *Toghill* v. *Grant.* vol. 2, p. 261

4. Bill of costs incurred by two persons ordered to be taxed on the application and upon the undertaking of one. *Lockhart* v. *Hardy.* vol. 4, p. 224

5. In general, a solicitor cannot obtain the taxation of his agent's costs, without bringing the amount into Court; but, under special circumstances, that condition will be dispensed with or the amount limited. *In re Smith.* vol. 4, p. 309

6. Costs directed by decree to be taxed as between a solicitor and client, cannot, on petition, be ordered to be taxed on another principle. *Massie* v. *Drake.* vol. 4, p. 433

7. The costs of rehearings are not carried by the words "costs of suit as between solicitor and client," but require to be specially mentioned in the order for taxation. *Semble.* The same rule applies to the costs of appeals and exceptions. *Agabeg* v. *Hartwell.* vol. 5, p. 271
8. The fees of the steward of a manor, who is a solicitor but acts in the character of steward only, are not taxable under the 6 & 7 *Vict.* c. 73. *Allen* v. *Aldridge.* vol. 5, p. 401
9. This statute does not authorize the taxation of every pecuniary demand or bill of a solicitor, for every species of employment in which he may happen to be engaged. *Ibid.*
10. A bill may be taxed though no part of the business was transacted in any court of law or equity, but such business must be connected with the profession of an attorney or solicitor:—business in which the attorney or solicitor was employed because he was an attorney or solicitor, or in which he would not have been employed if he had not been an attorney or solicitor, or if the relation of attorney or solicitor and client had not subsisted between him and his employer. *Ibid.*
11. A mere volunteer, under no previous liability, does not by paying a solicitor's bill acquire a right to tax it. *Ibid.*
12. The bill of costs of a mortgagee's solicitor for business done in relation to the mortgage, and the sale of the mortgaged estate, is taxable at the instance of the mortgagor, under the 6 & 7 *Vict.* c. 73, though no part of the business may have been transacted in any court of law or equity. *In re Lees.* vol. 5, p. 410
13. Within twelve months after payment of a bill of costs a client presented a petition for its taxation, but the petition having specified no items of overcharge, no order could be made. The twelve months having then expired, the Court refused to allow the petition to stand over, for the purpose of amendment, by specifying the items. *Barwell* v. *Brooks.* vol. 7, p. 345
14. Terms of taxation after the expiration of one month from the delivery of the bill. *In re Bromley.* vol. 7, p. 487
15. Delivery of a bill of costs to an agent of the client appointed for that purpose, held sufficient. *In re Bush.* vol. 8, p. 66
16. Delivery of a bill of costs, unsigned, but accompanied by a letter signed by the solicitor, and referring to the bills, held a sufficient compliance with the 6 & 7 *Vict.* c. 73, s. 37. *Ibid.*
17. The amount of a bill of costs was included in a settled account between a solicitor and client, and retained by the solicitor out of moneys in his hands. Held, that the Court had not jurisdiction, upon petition under 6 & 7 *Vict.* c. 73, to open the account and order taxation, and that it could only be done by bill. *Barwell* v. *Brooks; In re Cattlin.* vol. 8, p. 121
18. Under "The Solicitors' Act" (6 & 7 *Vict.* c. 73), references for taxation may be made by the Vice-Chancellors as well as by the Lord Chancellor and Master of the Rolls. *In re Carew.* vol. 8, p. 128
19. Settlement of a bill of costs between a solicitor and client upon a special agreement precludes an order being made, upon petition, or taxation: the agreement must be set aside by suit, before the matter can be reopened. *In re Whitcomb.* vol. 8, p. 140
20. The jurisdiction as to taxation given by "The Solicitors' Act," extends only to the ascertainment, by the ordinary rules of practice, of the *quantum* payable by one party to the other. It does not authorize the Court to determine whether a special agreement exists as to the mode of taxation, or the manner in which the costs, charges, and expenses are to be settled and paid. *In re Rhodes.* vol. 8, p. 224
21. Retrospective operation of "The Solicitors' Act," to make taxable bills not previously liable to taxation, incurred before, but remaining unsettled at, the time of passing the act. *Ibid.*
22. A solicitor was employed by two persons *A.* and *B.* An order of course, for taxation, was obtained by *A.* alone, on e allegation that the solicitor was employed by *A.* It was discharged for irregularity. *In re Perkins.* vol. 8, p. 241
23. Under "The Solicitors' Act" (6 & 7 *Vict.* c. 73), the client may obtain an order for the taxation of a solicitor's bill, which has been delivered without signature, &c. *In re Pender.* vol. 8, p. 299
24. In general, it is an objection to an order of course for taxation, that it contains a direction, on payment of the bill which the order itself directs to be taxed, to give up more papers than the solicitor is bound to give up. *Ibid.*
25. Parties agreed to compromise a suit, and the trustee's costs were to be deducted out of a fund in his hands. By an order of the Vice-Chancellor of *England*, the compromise was confirmed. It appeared to be the agreement between the parties, that the costs should be taxed in the cause. An application to the Master of the Rolls for taxation under the statute was refused with costs. *In re Howard.* vol. 8, p. 424
26. Where, upon an application for taxation under "The Solicitors' Act," it appears probable, that upon grounds not determinable under that jurisdiction, payment ought not to be made without further investigation, this Court may properly abstain from ordering payment, or from ordering the delivery up of deeds,

till the questions which cannot be determined under that jurisdiction have been properly investigated and determined elsewhere. *In re Dalby.* vol. 8, p. 424

27. Jurisdiction of the Vice-Chancellor under the 6 & 7 *Vict.* c. 73, to order the taxation of bills of costs. *Ibid.*

28. *A.* agreed to take a lease and to pay the expenses. The lease was prepared by the lessor's solicitors, who delivered his bill, made out as against the lessee. The lessee obtained an order to tax the bill, on an allegation that he, the lessee, had employed the solicitor, which being contrary to the fact, the order was discharged, but without costs, the matter in difference being very small. *In re Gabriel.* vol. 10, p. 45

29. A solicitor was employed by three partners. He brought an action against them for his bill of costs, and representing one, he obtained judgment against him by default. Held, that this did not prevent the others from obtaining an order for taxation. Held also, that an application for taxation by the two was regular, the third not concurring, but that he ought to be served with the petition. *In re Hair.* vol. 10, p. 187

30. An application for taxation of a bill, made fourteen months after its delivery, and before payment, refused, there being no sufficient "special circumstances." *In re Harper and Jones.* vol. 10, p. 284

31. A client gave his solicitor a promissory note, and signed a memorandum of settlement. The Court was strongly inclined to think that, under the circumstances, it ought to be deemed to amount to payment. *Ibid.*

32. Petition to tax a bill of costs, paid without pressure, nine days after its delivery, dismissed with costs. *In re Drew.* vol. 10, p. 368

33. Upon a taxation in equity, a question arose as to the liability of the client to pay the costs of a consolidated action at law. Leave was given to the solicitor to bring his action to try the question. *In re Anderson.* vol. 10, p. 399

34. A client, on a special petition, obtained an order for taxation. The taxation having been completed, the client presented a petition for the consequential directions. The solicitor then objected, that the common order would have been sufficient, and he asked the costs beyond those of a common order. Held, that the objection came too late. *In re Hair.* vol. 11, p. 96

35. Where a taxation is ordered after action brought, the general rule is, that if anything is found due, the client must pay the costs of the action. *Ibid.*

36. Order for taxation obtained by an insolvent debtor of a bill of costs incurred prior to his insolvency, discharged with costs. *In re Halsall.* vol. 11, p. 163

37. Under the common order to tax a solicitor's bill, the Taxing Masters would tax a bill for parliamentary business upon the scale of parliamentary allowances. *In re Sudlow and Kingdom.* vol. 11, p. 400

38. After action brought, an order was made here for taxation. The solicitor was found overpaid, but the action at law was in such a state, by the mispleading of the client, that, if it had proceeded, a balance would have been found due to the solicitor. On an application for an order against the solicitor to refund and pay the costs of the taxation, the Court made such order, but gave no costs of the action, or of the application. *In re Smith.* vol. 11, p. 468

39. Where, upon appeal from the Taxing Master, there appeared considerable difficulty in ascertaining the real facts, and questions of law depended upon them, the Court directed an action to try the question. *In re Burchell.* vol. 11, p. 596

40. An *ex parte* order for the delivery of a bill of costs discharged with costs: the allegation of the professional employment being denied by the solicitor. *In re Eldridge.* vol. 12, p. 387

41. A solicitor was ordered to deliver his bill for taxation. Upon a motion to commit for the non-delivery, he swore he had no documents or memoranda from which he could make out his bill. The Court made no order on the motion. *In re Ker.* vol. 12, p. 390

42. Two suits, attached to the Vice-Chancellor *E.*, were compromised; in one there was an order to dismiss on the payment of costs, and the other was stayed only. The costs of both were paid under pressure, and there were overcharges. Held, that the Master of the Rolls had jurisdiction to order a taxation. *In re Elmslie.* vol. 12, p. 538

43. A gross sum was paid to a solicitor in discharge of his claim; but no bill of costs was delivered. Held, that the client was entitled to have a bill of costs delivered. *In re Blackmore; In re Billing; In re Spike.* vol. 13, p. 154

44. A solicitor who delivers an unsigned bill of costs is bound by it; but his client may either treat it as a nullity or waive the want of signature, and adopt it; though after such waiver, the client cannot treat the bill as non-delivered. *In re Gedye.* vol. 14, p. 56

45. An order of course for taxation was refused at the Secretary's Office; but the Court, on a special application, thought that it was a proper case for an order of course. Held, that the costs ought to follow the result of the taxation. *Re Taylor.* vol. 15, p. 145

46. In a doubtful case, the client should apply to the solicitor for his consent to an order of course. *Re Taylor.* vol. 15, p. 145

47. A judgment at law which is not final does not preclude an order of course for taxation. *Re Gedye.* vol. 15, p. 254

48. An order of course for taxation discharged, on the ground of the suppression of the fact, that there had been a previous order of the Queen's Bench for taxation, upon terms which had not been complied with, and a subsequent application to the Exchequer for taxation, which had been refused. *Ibid.*

49. Held, by the Master of the Rolls that after judgment by default, in an action of debt for a solicitor's bill, in which the amount had not been ascertained, a taxation may be ordered, upon sufficient "special circumstances." But held, on appeal, by Lord *Cranworth*, that there could be no taxation under the statute after final judgment; Lord Justice *Knight Bruce*, however, expressing no opinion on the point. *Re Barnard.* vol. 16, p. 5

50. Held, secondly, by Lord *Cranworth*, that no order can be made for taxation, after such an order has been refused, by a Court of co-ordinate jurisdiction. *Ibid.*

51. Pending a reference for the taxation of a solicitor's bill against a married woman, the solicitor cannot maintain a suit to enforce a lien for his bill of costs on her separate estate. *Waugh* v. *Waddle.* vol. 16, p. 521

52. Where a solicitor is retained by two persons jointly, an application for taxation by one in the absence of the other, should not be made as of course. *Re Lewin.* vol. 16, p. 608

53. In 1851 *A.* and *B.* agreed to charge their real estates with the amount of costs due to their solicitor, with annual rests. The solicitor instituted a suit to enforce the lien, and the client presented a petition for taxation. The Court made the usual order for taxation, with a direction to the Master to ascertain the amount due in 1851, but held itself incompetent, on this occasion, to deal with the question of lien. *In re Moss.* vol. 17, p. 346

54. The Court of a revising barrister is not "a Court of Law" within The Solicitors Act, so as to exclude the jurisdiction of this Court to order the taxation of a bill containing items for business done in that Court. *In re Andrews.* vol. 17, p. 510

55. Variation directed to be made by the Court in common form of the order of course to deliver and tax a solicitor's bill. *Re Smith.* vol. 19, p. 329

56. The Court has jurisdiction to make an order for the taxation of a bill, giving liberty to the client to question the retainer. *In re Thurgood.* vol. 19, p. 541

57. The allowance of costs by the Taxing Master does not, when registered under 1 & 2 *Vict.* c. 110, constitute a charge on the real estate of the client. *Shaw* v. *Neale.* vol. 20, p. 157

58. Pending a taxation, both the solicitor and client died, the reference was revived, and the taxation continued between the representatives. *Re Whalley.* vol. 20, p. 576

59. An order was made upon a solicitor for the delivery of his bill within fourteen days. He was unable to comply, and on a motion for the second order, he asked for further time. It was given, but he was ordered to pay the costs of the motion. *In re Dendy.* vol. 21, p. 565

60. An order was made for taxation, nominally on the petition and undertaking of *A. B.* and others. The certificate was made ten years after, and an order was then made on *A. B.* to pay. *A. B.* applied to discharge the order for payment, shewing that the order had been obtained without his authority and during his absence from *England*. Held, that while the order for taxation stood, the order for payment was regular; but what his remedy might be, *quære*. *Re Thompson and Debenham.* vol. 25, p. 245

61. The charges of solicitors employed as electioneering agents held taxable under the statute. *In re Osborne.* vol. 25, p. 353

62. The proper mode of enforcing the delivery of a solicitor's bill is, to serve the order with a proper indorsement under Order xxiii. 10, and upon default being made, an attachment will go as of course. *Ex parte Belton.* vol. 25, p. 368

63. A client presented a special petition for the taxation of his solicitor's bill, complaining that the solicitor had taken reckless proceedings, and praying that the costs of them might be wholly disallowed on taxation. A special petition was held to be unnecessary, and the Petitioner was ordered to pay the costs of it. *Re Atkinson and Pilgrim.* vol. 26, p. 151

64. A solicitor delivered a general estimate of costs due to him, without specifying the particulars. The client signed a memorandum agreeing to the statement, and requesting *A. B.* (to whom he had given his acceptance), to pay the amount. A bill filed by the client more than three years afterwards, to obtain a delivery and taxation of the bill of costs, was dismissed with costs. *Turner* v. *Hand.* vol. 27, p. 561

65. In a petition to tax it is not necessary to specify all the items objected to. *Re Dawson and Bryan.* vol. 28, p. 605

66. Upon an application by one of several persons interested, for the taxation of a bill of costs of considerable amount, the Court, in determining the Petitioner's

right to a taxation, will not regard the amount of the Petitioner's interest. *Re Dawson and Bryan.* vol. 28, p. 605

67. In an action by a client against his solicitor, the latter pleaded his bill of costs by way of set-off. The client obtained an order for the delivery of the bill and suffered himself to be *non prossed*. Held, that it was not necessary to state these circumstances on an *ex parte* application in Chancery for taxation. *Re David.* vol. 30, p. 278

68. An order of course to tax a solicitor's bill incurred by three persons, obtained on the application of two of them, is irregular. *Re Ilderton.* vol. 33, p. 201

69. A client obtained an order of course to tax, after action brought, but before notice of it, and the order did not provide for the costs of the action. Held, that this was not irregular, and a motion to discharge it was refused with costs. *Re Farington.* vol. 33, p. 346

70. A solicitor delivered four bills, the last of which and the cash account shewed, upon the whole, a large balance due to the solicitor. The solicitor brought an action to recover the balance, whereupon the client obtained an order of course to tax the last bill and to stay the action in the meantime. The order was held irregular, and was discharged with costs. *Re Yetts.* vol. 33, p. 412

71. The Court will, before the completion of a taxation, order the delivery up of papers by a solicitor to his client, either upon payment into Court of the amount claimed, or in case it appears from the solicitor's own account that a balance is due from him to his client. *Re Bevan and Whitting.* vol. 33, p. 439

72. A solicitor ordered, pending a taxation of his bill, to deliver over his client's papers, on the client undertaking to produce them and giving security for the amount claimed. *Re Jewitt.* (No. 2.) vol. 34, p. 22

73. The Court cannot, since the General Order of the 2nd of *August*, 1864, entertain a special petition for the delivery and taxation of a bill of costs, and for payment over to the client of the balance of the cash account. Such applications can now only be made in Chambers. *Re May.* vol. 34, p. 132

74. In ordering the taxation of a bill claimed against two persons, the Court gave both liberty to question the retainer, and directed the Taxing Master to distinguish by and to whom each sum found due was to be paid. *Re Kitton.* vol. 35, p. 369

TAXATION BY THIRD PARTY.

1. Whether the taxation, at the instance of a *cestui que trust*, of a bill of costs which has been long since settled and paid by trustees out of a trust fund, ought to take place as against the trustees for the purpose of justifying their payment, *quære*. *Grove* v. *Sansom.* vol. 1, p. 297

2. Where a *cestui que trust* applies for taxation, then if there has been no payment the rules under which taxation is to be directed are such as are pointed out by the thirty-seventh section of the 6 & 7 *Vict.* c. 73, and if there has been payment, by the forty-first section. *In re Downes.* vol. 5, p. 425

3. Whenever the 6 & 7 *Vict.* c. 73, applies, the Court cannot, in any case whatever, send a bill for taxation as against the solicitor, if it has been paid more than twelve months; but the Court may, after that period, direct a taxation as between a trustee and his *cestui que trust*, to justify the payments of the former. *Ibid.*

4. After payment, an ex-parte order for taxation is irregular, and the same rule applies, where the payment is made by a mortgagee, and the taxation is at the instance of the mortgagor as the party ultimately "liable to pay." *In re Carew.* vol. 8, p. 150

5. Under ordinary circumstances, an order for taxation may be obtained as of course by third parties "liable to pay." *In re Bracey.* vol. 8, p. 338

6. A taxation at the instance of a mortgagor of the bill of the mortgagee's solicitor, must be as between the solicitor and his client, the mortgagee. *In re Wells.* vol. 8, p. 416

7. The lapse of twelve calendar months after payment of a bill of costs precludes taxation, and the rule applies, where payment is made by trustees, &c., and the application for taxation is made, under the 38th section of the 6 & 7 *Vict.* c. 73, by a party "liable to pay." *In re Massey.* vol. 8, p. 458

8. Where a *cestui que trust* seeks to tax the solicitor's bill paid by his trustee, on the ground of overcharge, he must allege and prove specific items. *In re Bennett.* vol. 8, p. 467

9. A mortgagor has not a right to have the bills of the mortgagee's solicitor taxed upon different principles from those which would be applied to the taxation of the same bill, upon the petition of the mortgagee. *In re Jones.* vol. 8, p. 479

10. The taxation (under the 6 & 7 *Vict.* c. 73) of a solicitor's bill at the instance of a third party "liable to pay" is regulated by the relations existing between the solicitor and his client, and not as between the solicitor and such third party. *In re Fyson.* vol. 9, p. 117

11. The taxation of the bill of a mortgagee's solicitor, at the instance of the mortgagor, takes place as between the

solicitor and the mortgagee, his client. *In re Harrison.* vol. 10, p. 57

12. The bill of trustee's solicitor was delivered on the 27th of *November*, and on the 10th of *December* paid, after some deductions, by the solicitor of the *cestui que trust*, as he alleged, under protest. A petition for taxation presented by the *cestui que trust* in *January* following was dismissed with costs. *In re Neate.* vol. 10, p. 181

13. Application by residuary legatee, more than twelve months after payment, for the taxation of a solicitor's bill against the executor, refused; notwithstanding there had been some agreement between the legatee and solicitor, and that payment had afterwards been made behind the back of the legatee. *In re Rees.* vol. 12, p. 256

14. The solicitor of trustees and executors received payment of his bill of costs out of the estate. Held, that a residuary legatee was entitled to have a copy of the bill delivered on payment of the costs of it. *In re Blackmore.* vol. 13, p. 154

15. The taxation under the 38th section, or the "third party liable clause," is by order of course; but, under the 39th section, or "third party interested" clause, the application is special. *Re Stratford.* vol. 16, p. 27

16. Where a mortgagor seeks a taxation of the bill of the mortgagee's solicitor, it must be looked at not as between the mortgagor and the solicitor, but as between the solicitor and his client, the mortgagee. *In re Barrow.* vol. 17, p. 547

17. *A.*, a solicitor, being one of three mortgagees, arranged with another solicitor, *B.*, to "act as his agent" in the matter of the mortgage on agency terms. *B.* accordingly acted, and sent in his bill prepared as between solicitor and client, which was paid by the mortgagees. *B.* allowed *A.* 100*l.* as his share of the profits. After this, on the application of second incumbrancers, the bill was taxed. Held, that the Taxing Master was right in taxing it on the principle of solicitor and agent, for the agreement between *A.* and *B.* was valid, though it enured to the benefit of the mortgagees, and that the bill was properly taxable at the instance of the second incumbrancers as between them and *B.* *In re Taylor.* vol. 18, p. 165

18. Upon paying off a mortgage, the bill of the mortgagees' solicitor, though objected to, was paid in full, the solicitor undertaking "to refund" so much of "the mortgagees' law charges" as might be "found to be in excess of what they were entitled to receive." Held, that the Court would enforce the undertaking, upon petition, by ordering a taxation, and that it was to be as between the mortgagor and mortgagees. *Re Fisher.* vol. 18, p. 183

19. *A.*, the next friend of infants in a suit, employed *B.* as solicitor therein and in other matters. An order was made, in the suit, for the taxation and payment to *B.* of his costs of suit. Before this had been done, *A.* obtained, *ex parte*, an order to tax *B.*'s bill in all the matters in which he had been employed for *A.* Held, that the order was regular. *In re Flaker.* vol. 20, p. 143

20. Taxation ordered, at the instance of *cestuis que trusts* of a bill incurred in respect of a trust estate, by trustees, both being now dead; but any balance due from the solicitor was ordered to be paid into Court to a separate account and not to the Petitioners. *In re Hallett.* vol. 21, p. 250

21. Under the third-party clause (6 & 7 *Vict.* c. 73, s. 39) it was held not necessary, where a *cestui que trust* applied for taxation of bills paid by trustees or executors, to shew that there are fraudulent overcharges. *In re Drake.* vol. 22, p. 438

22. *A.* and *B.* compromised a suit, *B.* agreeing to pay *A.*'s costs, and any question on this was to be referred to an arbitrator who was named. *A.*'s solicitor delivered his bill of costs to *B.* Held, that *B.* was entitled to a taxation by an order of course. *Re Hartley.* vol. 30, p. 620

23. Upon a petition by a mortgagor to tax the bill of the mortgagee's solicitor, after payment, the mortgagee must be served. *Re Baker.* vol. 32, p. 526

24. A mortgagor seeking to tax the bill of the mortgagee's solicitor, as against the solicitor, stands in the position of the mortgagee himself, and if the mortgagee cannot tax it, neither can the mortgagor; but the mortgagor may tax it as against the mortgagee for the purpose of diminishing the amount of his claim. *Ibid.*

25. A second mortgagee presented a petition to tax the bill of costs of the first mortgagee's solicitor, which had been paid out of the produce of the sale of the mortgaged estate. Held, that the first mortgagees must be served with the petition. *In re Jessop.* vol. 32, p. 406

26. To prevent the sale of the mortgaged property by a first mortgagee, a *puisne* mortgagee took a transfer of the first mortgage, by deed executed by him, which recited the amount due on the first mortgage. This, however, included the costs of the first mortgagee's solicitor, no account of which had been delivered until afterwards. The bill contained some costs of the solicitor against the mortgagor, and therefore not mortgagee's costs. Held, that the *puisne* mortgagee was not entitled, on summons,

to an order for the taxation of the bill. *Re Forsyth.* vol. 34, p. 140

27. Under the third party clause in the Solicitors Act (6 & 7 *Vict.* c. 73, s. 38), the third party stands in the position of the client, and if the client is not entitled to a taxation against the solicitor, neither is the third party entitled to a taxation, under the act, either as against the solicitor or as against the client. But he may be entitled to have a taxation as against the client in a suit. *Re Massey.* vol. 34, p. 463

28. A company, who employed standing solicitors at a fixed salary, became the purchaser under the Court. The biddings were opened on payment by the applicant of the costs of the company. Held, that the applicant was not, on the taxation, entitled to the benefit of the private arrangement between the company and their solicitors. *Raymond* v. *Lakeman.* vol. 34, p. 584

TAXATION, COSTS OF.

1. In a suit for the administration of the estate of a testator, a solicitor carried in a claim for his bills of costs, which, on taxation, were reduced by more than one-sixth. Held, that the solicitor ought to pay the costs of the taxation. *Silvertop* v. *Ramsay.* vol. 1, p. 434

2. On taxation, charges disallowed for want of authority, and charges reduced by limiting to one of several defendants his aliquot part of a joint charge, ought not to be computed in determining on whom the costs of taxation should fall, *semble*. *Attorney-General* v. *Nethercoat.* vol. 3, p. 297

3. A solicitor was retained by *A. B.* and four other defendants; *A. B.* having withdrawn his retainer, the solicitor delivered his bill against *A. B.*, amounting to 19*l.* 19*s.*, which was referred for taxation; the Master, considering that *A. B.* was liable to one-fifth part only of several charges, struck off four-fifths thereof, and certified he had taxed the bill at 4*l.* 10*s.* 6*d.* The client then obtained an order of course for payment by the solicitor of the costs of the taxation; a motion being made, on behalf of the solicitor, to discharge the latter order for irregularity, on the ground that more than one-sixth had not been struck off within the rule, but no application being made to be relieved from the certificate, which warranted the second order, the motion was, on that ground, refused, with costs. *Muskett* v. *Hill.* vol. 3, p. 301

4. Where taxation was directed after action brought, this Court did not before the act give the client the costs of taxation, though more than one-sixth be taxed off. *Toghill* v. *Grant.* vol. 6, p. 348

5. The Court, though it refuses the prayer of a petition for taxation, does not always give the costs. *In re Thompson.* vol. 8, p. 237

6. A mortgagee's solicitor retained the amount of his bill of costs out of the produce of the sale of the mortgaged estate, and he charged the amount in an account delivered to the mortgagor. Held, that an order for taxation within twelve months might be obtained as of course, and a special petition having been presented for that object, the order was made, but the petitioner was ordered to pay the costs. *In re Bignold.* vol. 9, p. 269

7. Great discretion is allowed to the Taxing Master as to the items of the costs of taxation. *In re Burchell.* vol. 11, p. 596

8. The costs of taxation depend on whether one-sixth is taken off the bill of costs; and to determine this, a distinction is to be made between strictly professional charges and disbursements, and independent cash payments. Those payments *only* which are made in pursuance of the professional duty undertaken by the solicitor, and which he is bound to perform, or which are sanctioned as professional payments, by the general and established custom and practice of the profession, ought to be entered and allowed as professional disbursements in the bill of costs. Other disbursements ought to be included in a separate cash account. *In re Remnant.* vol. 11, p. 603

9. Upon a taxation, a solicitor put in an insufficient examination. He was ordered, on motion, to pay the costs occasioned thereby, and of the four-day order and of the application. *In re Bainbrigge.* vol. 11, p. 620

10. Upon a motion, after taxation, for an order on a solicitor to pay the amount found due from him, he was also ordered to pay the costs of the application. *In re Bainbrigge.* vol. 13, p. 108

11. A solicitor ordered to pay the costs of a special petition, rendered necessary by his refusal to consent to the common order for delivery of his bill and for its taxation. *Re Adamson.* vol. 18, p. 460

12. Only one fee of 6*s.* 8*d.* is allowed for attending for and to file a certificate of taxation, and not 6*s.* 8*d.* to bespeak for same, and 6*s.* 8*d.* for attending filing same. *Re Catlin.* vol. 18, p. 513

13. Less than one-sixth was taken off a bill of costs on taxation, but more than one-sixth was taken off in the suit (which was one for a general account between the solicitor and client), but on other grounds, into which the Taxing Master could not enter. The costs of taxation were allowed to the solicitor. *May* v. *Biggenden.* vol. 24, p. 207

TAXATION (ITEMS).

1. A bill of costs, nearly the whole of which had been paid, contained items unconnected with professional employment, as for a horse, &c. Held, that the solicitor ought, in taxation, to have credit for such items (if due), although they had not become due to him in the character of solicitor. *Waring* v. *Williams*. vol. 2, p. 1
2. Whether, where after the taxation of a particular bill of costs as between solicitor and client, a general taxation is directed, a solicitor can include items included in the former taxation, but not allowed, or ought, for the purpose of explanation, to introduce items taxed and paid on the former taxation, *quære*. *Tarbuck* v. *Tarbuck*. vol. 4, p. 149
3. Payment in respect of counsel's fees should specify the cause and each particular fee. Payments, except for stated and specific fees, for particular matters of business done, or to be done, disapproved of. *In re Smith*. vol. 4, p. 309
4. An account of all the dealings and pecuniary transactions not connected with the bills of costs, cannot be obtained upon a petition for the taxation of costs. The account directed on petition being limited to moneys paid or duly appropriated towards satisfaction of the bills. *Ibid.*
5. Generally, country solicitors are not allowed the costs of a journey to *London* to examine abstracts there, unless there be some specialty. *In re Tryon*. vol. 7, p. 496
6. Costs of a case laid before counsel as to a supplemental bill, and costs of a consultation between a new junior and the former junior who had been promoted, allowed in a taxation as between solicitor and client. *Lucas* v. *Peacock*. vol. 8, p. 1
7. A client, who had employed a solicitor in several matters, obtained an order of course for the taxation of the costs of one matter only, with a direction that, on payment, the solicitor should deliver all the papers belonging to the client. It was discharged with costs for irregularity. *Holland* v. *Gwynne*. vol. 8, p. 124
8. In equity the client in prosecuting the common order for taxation may object, on the ground of want of retainer, to any items of the bill, except those as to which he has admitted the retainer by his petition. The practice is different at law. *In re Bracey*. vol. 8, p. 266
9. Upon an application to tax a paid bill, the solicitor will not be permitted to add to any undercharges contained therein, but the taxation must be had on the bill as delivered and paid. *In re Wells*. vol. 8, p. 338
10. A solicitor having delivered his bill, is bound by it, and the taxation must be on that bill; he is not entitled, as of course, to reduce his demand, or to reserve the power of adding to the charges. *In re Carven*. vol. 8, p. 436
11. A solicitor was employed by a testator in his lifetime, and by his executors and trustees after his death. The latter having applied for a taxation of the bills subsequent to the death: Held, that the solicitor was, on this application, entitled to have a taxation of all the bills. *In re Dalby*. vol. 8, p. 469
12. Observations as to the allowance to solicitors in taxation, of costs for business not necessary or required for the interests of their clients by way of compensation for services for which they are inadequately remunerated; distinction between this and fictitious charges for important business as done, which, in fact, has been neglected. *Davenport* v. *Stafford*. vol. 8, p. 503
13. As to what items of disbursement are properly included in a bill of costs. *In re Bedson*. vol. 9, p. 5
14. Legacy and probate duties estimated at 140*l.* were payable, in order to make available certain funds in court. The solicitor, at the request of the client, engaged to pay them, and took a charge on the funds for 140*l.* and interest. The duties, amounting to 78*l.* only, were paid by the solicitor. Held, that that sum formed a proper item in his account on the taxation of the bill of costs. *Ibid.*
15. Where the Taxing Master has received no special directions from the Court in regard to payments made by a client to his solicitor, it is his duty to confine himself to simple payments plainly proved to have been made on account of the costs. *In re Smith*. vol. 9, p. 182
16. In ascertaining what is due on bills of costs, and in the consideration of what payments have been made on account of them, questions of law and fact of considerable difficulty may incidentally arise, and may possibly justify and require discussion and determination, even in the jurisdiction exercised by the Court on petitions for taxation. *Ibid.*
17. Expedition-money, paid by a solicitor to a stationer or writing clerk employed in the Registrar's office, disallowed upon taxation. *In re Bedson*. vol. 9, p. 187
18. A gratuity paid to the clerks of the Accountant-General's office was disallowed to the solicitor on taxation, as was also a fee paid upon bespeaking an order for transfer which could not be made available. *Ibid.*
19. A solicitor having knowingly, in his bill of costs, fixed the rate of his charges for business, cannot afterwards, on a taxation, be allowed to increase it. *In re Walters*. vol. 9, p. 299

20. Pending a taxation, leave given, upon special application, to carry in an additional bill for specified items of undercharge and omission arising from error and mistake. *In re Walters.* vol. 9, p. 299

21. Where a solicitor makes against his client any charge not authorized in the usual and regular mode of proceeding, the burden of proof is upon the solicitor, and, in a case where, for the interest of a client, the solicitor had advanced money to put in the answer of a Co-Defendant, it was disallowed, on the ground that it was not clearly made out that the client authorized or acquiesced in it. *In re Pender.* vol. 10, p. 390

22. Brief of pleadings made before the case was at issue disallowed. *Ibid.*

23. Fee of counsel for settling a special affidavit for leave to amend disallowed in a taxation between solicitor and client. *Ibid.*

24. The costs of an affidavit, filed in support of a motion, but not entered in the order as read, will not be allowed on taxation, even as between solicitor and client. *Stephens* v. *Lord Newborough.* vol. 11, p. 403

25. Copy of a correspondence between the parties, furnished to counsel as instructions for a bill and partially inserted therein, disallowed on a taxation as between solicitor and client. *Ibid.*

26. Briefs to two counsel, on an unopposed motion made by a trustee to pay money into Court, allowed, upon appeal from the decision of the Taxing Master. *Ibid.*

27. A petition was presented to compromise a suit, which it was supposed would be unopposed, but, after the delivery of the briefs, an opposition was threatened. Further briefs being thereupon delivered, the costs thereof were allowed on taxation as between solicitor and client. *Ibid.*

28. A payment for legacy duty made by a solicitor for his client ought, for taxation, to be included in his cash account and not in his bill of costs, and therefore such a payment is not to enter into the computation, in considering whether a sixth is taxed off. *In re Haigh.* vol. 12, p. 307

29. Items struck out of a solicitor's bill on taxation, as chargeable against another person, must be taken into account, in determining the costs of the taxation. *In re Clark.* vol. 13, p. 173

30. Under an order to tax, the Master may take an account of the receipts of the solicitor on account of interest received by him, but he cannot charge him with the profits made from moneys of his clients in his hands. *In re Savery.* vol. 13, p. 418

31. On taxation, a solicitor cannot be charged with interest on balances in hand; but a solicitor having debited himself with interest in his cash account rendered: Held, that the Master ought to have charged him. *In re Savery.* vol. 15, p. 58

32. Under an order for taxation, 2*l.* 2*s.* was allowed to the solicitor then acting for the client for perusing the bill of his predecessor, it having led to a compromise. *Re Catlin.* vol. 18, p. 510

33. A client was liable to a solicitor for the costs for procuring the execution of a lease by her tenant, but which the tenant was to bear. The amount not having been paid when the order to tax was made: Held, that the charge was properly included in the bill of costs of the solicitor against his client. *Re Catlin.* vol. 18, p. 513

34. Charge of 13*s.* 4*d.* for a list of deeds, handed over by a solicitor, under an order for taxation, disallowed. *Ibid.*

35. A solicitor is entitled to charge for the costs of the affidavit made by him, on delivering up the papers, under an order for taxation. *Ibid.*

36. Where no fee is paid to counsel on a consultation, no charge can be allowed to the solicitor for his attendance. *Ibid.*

37. The 1*l.* 1*s.*, allowed by the orders of 7th of *August*, 1852, for instructions for brief, was intended as a compensation for the old fee for abbreviating the bill at 4*d.* a folio, which ceased on bills being printed. And where there has been a change of solicitors, the solicitor, at the time of filing the replication, is ordinarily entitled thereto. *Ibid.*

38. A solicitor cannot make, nor has the Taxing Master any jurisdiction to permit, any alteration or amendment to be made in a delivered bill except by consent. *Ibid.*

39. Two counsel having been instructed by the Respondents on a motion, 42*s.* costs were summarily given. *Yearsley* v. *Yearsley.* vol. 19, p. 1

40. Costs of a journey to *Paris* to obtain the execution of a deed disallowed, beyond the expense of doing it through an agent. *In re Bevan.* vol. 20, p. 146

41. By error and mistake, some items were omitted from, and others undercharged and overcharged in, a bill of costs referred for taxation. On a petition by the executor of the solicitor, liberty was given to insert the omitted items and increase those undercharged, but he was not allowed to decrease the overcharges. The costs of the application were ordered to be paid by the petitioner. *Re Whalley.* vol. 20, p. 576

42. According to the new practice, 15 & 16 *Vict.* c. 86, s. 46, in cases of sale by the Court, an abstract of title is submitted to counsel to prepare the conditions of

sale. Counsel having made certain *queries* upon four sheets of an abstract, the vendor's solicitor charged 1*l.* 1*s.* for perusing the same, &c., and 4*l.* 6*s.* 8*d.* for a second fair copy of the abstract for the purchaser's solicitor. The Taxing Master disallowed the first item, and reduced the second to 13*s.* 4*d.*, which he allowed for recopying the four spoiled sheets of the abstract, to render it fit to be sent to the purchaser's solicitor's. On a petition to review: Held, that the Taxing Master was right, and that they were matters entirely within the discretion of the Taxing Master. *Rumsey* v. *Rumsey; Ex parte J. C. Rumsey.* vol. 21, p. 40

43. A charge for copies only of those parts of the interrogatories, the answers to which were excepted to, can be allowed for the purposes of the consultation on the exceptions, as distinct from the copies made for the purpose of preparing the answer; for which latter purpose, also, only one copy to one junior counsel can be allowed. *Davis* v. *Earl of Dysart.* (No. 2.) vol. 21, p. 124

44. A bill by an incumbrancer of an alleged remainderman against the tenant for life for production of the title-deeds, and involving questions of title, was dismissed with costs. Upon the taxation, a charge was made for an abstract of title-deeds. Held, that the word "abstract" was intentionally omitted from the 120*th General Order of May*, 1845, and that the charge for the abstract could not be allowed if it exceeded that of a copy of the documents; secondly, that no such charge could be allowed for an abstract made before the suit, though with a view to an arrangement between the same parties; but thirdly, that a copy of it for the use of the counsel who prepared the answer might be allowed. *Ibid.*

45. Fees to two junior counsel (one of them being a conveyancer only) to settle the answer cannot be allowed as between party and party, unless by special order of the Court. *Re Whalley.* vol. 21, p. 576

46. A charge for abbreviating the answer, estimating it at its total length, including schedules, is proper, and to be allowed on a taxation between party and party. *Ibid.*

47. Where, by arrangement, exceptions to an answer were heard with the cause, a charge for consultation between counsel on the exceptions, as distinct from the consultation on the hearing of the cause was allowed. *Ibid.*

48. A petition was presented for the taxation of a paid bill of costs, alleging specific items of overcharge. The solicitor thereupon offered to repay the amount of such items and the costs. The Petitioner did not accede to this, but brought the petition to a hearing. The Court ordered the taxation of the bill, treating these items as omitted. *Re Catlin.* (No. 2.) vol. 23, p. 412

49. One of several Defendants appealed, substantially, from the whole decree, and the appeal was dismissed with costs. Held, on taxation, that the same fees on the plaintiff's briefs which had been allowed on the original hearing ought to be allowed on the appeal. Held also, that the length of the interval between the two hearings ought not to vary the amount. *Sturgis* v. *Morse.* (No. 2.) vol. 26, p. 562

50. An order to tax the costs of an executor in a suit, including any costs, charges and expenses properly incurred by him in the execution of the trusts of the will, does not include the costs of his defence to other suits instituted against him as executor. *Payne* v. *Little.* vol. 27, p. 83

51. A bill of costs was settled by retainer, a second and subsequent bill was also settled in the same way. Held, on an application to tax the second bill only, that the solicitor could not insist on having both taxed. *In re Gregg.* vol. 30, p. 259

52. Moneys specifically paid by a client to his solicitor for counsel's fees and stamps as they were required: Held, properly included in the solicitor's bill in calculating the sixth on a taxation. *In re Metcalfe.* vol. 30, p. 406

53. Shorthand writer's notes of the cross-examination of witnesses in Court allowed, but costs of his notes of the judgment disallowed, on a taxation between party and party. *Clark* v. *Malpas.* (No. 2.) vol. 31, p. 554

54. The cost of bringing up witnesses for cross-examination in Court allowed, in a taxation between party and party, although they had not been actually cross-examined. *Ibid.*

55. Costs of inrolling decree disallowed on taxation between party and party. *Ibid.*

56. Costs of attendance of the country solicitor in a country cause, where witnesses were cross-examined in Court, disallowed in a taxation between party and party. *Ibid.*

57. Application of a solicitor, after an order for taxation, to withdraw a non-taxable item from his bill, refused. *Re Blakesley and Beswick.* vol. 32, p. 379

58. The solicitor of a railway company, in his bill, charged 500 guineas, in a lump sum, for attendances and correspondences for a period of above one year. The bill was ordered to be taxed. Held, that the solicitor might supply a detailed statement of the items comprised in the general charge exceeding that amount,

but that he could not increase his demand beyond 500 guineas. *Re Tilleard.* vol. 32, p. 476

59. A solicitor had employed an auctioneer to sell some property for his client. He, however, made no previous arrangement as to the amount of his remuneration, and the auctioneer had retained, out of the deposits, more than would be allowed under the bankruptcy scale. Held, reversing the decision of the Taxing Master, who had merely allowed the amount according to the scale in bankruptcy, that the whole charge ought to be allowed to the solicitor. *Re Page.* (No. 3.) vol. 32, p. 487

60. The costs of suit were ordered to be taxed as between solicitor and client, and paid out of the trust funds. It was held, that the costs of a consultation with Queen's Counsel, as to the frame of the bill, ought to be allowed, notwithstanding, by his advice, a part of the relief sought by the draft bill was abandoned, and never became the subject of the suit. *Forster* v. *Davies.* vol. 32, p. 624

61. A solicitor, after delivering his bill of costs, may, before being served with an order for taxation, withdraw it and substitute another bill of a reduced amount. *Re Chambers.* vol. 34, p. 177

TAXATION (SPECIAL AGREEMENT).

1. The taxation of the bill of costs of the agent of a solicitor, upon the footing of a special agreement requiring the Master to depart from the ordinary rules of taxation, cannot be obtained upon petition. *In re Smith.* vol. 4, p. 309

2. Upon the settlement of an account between a solicitor and his client, a sum of 75*l.* was retained by the solicitor, by consent, to answer particular costs not then ascertained. The Court limited the taxation to such particular costs. *Massie* v. *Drake.* vol. 4, p. 433

3. The Court has no authority, upon a petition by a client against his solicitor, to give relief founded on a special agreement. *Alexander* v. *Anderton.* vol. 6, p. 405 (See *Re Thompson.* vol. 8, p. 237)

4. Parties agreed to compromise a suit, and that the "costs, charges, and expenses, as between solicitor and client," should be paid out of the fund. Held, that the Taxing Master ought to treat the suit as properly constituted, and ought not, in the taxation, to consider whether Defendants having interests similar to the Plaintiffs should have been made Co-Plaintiffs; and secondly, that if any of the parties entering into the compromise intended to challenge the propriety of the constitution of the suit, they ought to have distinctly stated, and have provided for it in the agreement. *Lucas* v. *Peacock.* vol. 8, p. 1

5. Solicitors employed in a suit, and a prosecution arising thereout, delivered two bills. The surviving Plaintiffs obtained an order for the taxation of the bills, submitting to pay what was due "on the taxation of their said bills;" before the Taxing Master, they disputed their retainer in the prosecution. The Master having completed the taxation, they presented a petition, praying that they might be ordered to pay the first bill only, and that, if necessary, the Master's certificate and the order for taxation might be varied. The petition was dismissed with costs. *In re Springall.* vol. 8, p. 63

6. A special agreement precludes an order being made, upon petition, for taxation: the agreement must first be set aside by suit, before the matter can be reopened. *In re Whitcombe.* vol. 8, p. 140

7. Parties agreed to compromise a suit, and the trustee's costs were to be deducted out of a fund in his hands. By an order of the Vice-Chancellor of *England*, the compromise was confirmed. It appeared to be the agreement between the parties, that the costs should be taxed in the cause. An application to the Master of the Rolls for taxation under the statute was refused with costs. *In re Howard.* vol. 8, p. 424

8. In proceeding under the Solicitors Act, the Court is not authorized to interfere with a special agreement between solicitor and client, the legal effect of which is to alter the ordinary relation between solicitor and client, by providing for the settlement and payment of the bill in a special manner. *In re Eyre.* vol. 10, p. 569

9. An agreement was signed between a solicitor and his clients, by which the former was to take a sum agreed on, in full of all demands. An order of course afterwards obtained for the taxation of his bill was discharged for irregularity. *In re Mackrill.* vol. 11, p. 42

10. A *cestui que trust* agreed that her trustee, if he acted as solicitor in a suit, should receive full costs. A bill was delivered on the 18th of *February*, and on the 8th of *March* the solicitor ceased to act. After discussion as to the amount, and having received other professional advice, the client paid the bill on the 22nd of *May*, a deduction being made therein. On an application made within twelve months, the Court refused to order a taxation. *In re Wyche.* vol. 11, p. 209

11. A solicitor acted for clients under a

special agreement as to costs, which was doubtful. Held, that the Court had no jurisdiction to determine the construction and effect of the special agreement on petition. *In re Beale.* vol. 11, p. 600

12. A meeting was appointed to settle important matters on the 23rd of *August*, and the costs were to be paid by *A. B.* The bill of costs was delivered the evening before, and payment was then insisted on, though the bill was objected to. Upon evidence of overcharge, taxation was ordered after payment. *In re Elmslie.* vol. 12, p. 538

13. *A.* employed *B.*, a writer to the signet, as his law agent in *Scotland*; and on the recommendation of *B.*, he employed *C.* as his solicitor in *England*. By a private agreement between *B.* and *C.*, the latter arranged to allow the former half the profits of the business transacted by him for *A.* Upon a taxation of *C.*'s bill, *A.* presented a petition claiming the benefit of the agreement between *B.* and *C.*; but it was dismissed with costs. *Gordon* v. *Dalzell.* vol. 15, p. 351

14. A solicitor entered into a special agreement with his client for interest on his bill, with annual rests, and for a charge on the estate recovered. Held, that this was not a proper case for an order of course for taxation, and such an order was discharged. *Re Moss.* vol. 17, p. 59

15. A client having withdrawn from a litigation, his solicitor agreed to take one-third of his bill in full discharge if the suit failed (which was to be carried on for the benefit of another party), and the client agreed to pay the remaining two-thirds if it succeeded. The Court refused, eight years afterwards, when the suit had succeeded, to open the transaction by ordering a taxation of the bill. *In re Moss.* vol. 17, p. 340

16. An agreement to charge costs out of pocket only does not preclude a taxation. A solicitor, in 1849, agreed to charge sums out of pocket only, provided the client was unable to recover the proper costs in the business. A taxation was ordered of a bill for business in 1853, in the usual terms, and without determining any question as to the agreement. *Re Ransom.* vol. 18, p. 220

17. The Court has jurisdiction to make an order for the taxation of a bill, giving liberty to the client to question the retainer. *In re Thurgood.* vol. 19, p. 541

18. Agreement between a solicitor and his client, an illiterate person, for payment of his bills (taken at a given amount), solely out of the produce of some property, the subject of the suit. Held, not to preclude taxation. *Re Ingle.* vol. 21, p. 275

19. A solicitor claimed five bills of costs against his client. The client obtained an order of course to tax two only. It was discharged with costs. *In re Law and Gould.* vol. 21, p. 481

20. A solicitor agreed to undertake the defence of another solicitor upon agency charges. On special petition, a taxation of his bill was ordered, "having regard to the agreement." *Re Gedye.* vol. 23, p. 347

21. Agreement by a solicitor to receive a fixed sum for costs for business hereafter to be done is not binding on the client, who is, notwithstanding payment under it, entitled to an order of Court for the delivery of a bill of costs and its taxation. *In re Newman.* vol. 30, p. 196

22. *A.* and *B.* compromised a suit, *B.* agreeing to pay *A.*'s costs, and any question on this was to be referred to an arbitrator who was named. *A.*'s solicitor delivered his bill of costs to *B.* Held, that *B.* was entitled to a taxation by an order of course. *Re Hartley.* vol. 30, p. 620

TAXATION (SPECIAL CIRCUMSTANCES).

1. The mere circumstance that a bill of costs contains items which would be disallowed or reduced on taxation, is not, of itself, sufficient to entitle the party to a taxation of a bill which has been settled and paid. *Massie* v. *Drake.* vol. 4, p. 433

2. A bill of costs, settled and paid after examination, discussion, and an abatement made by the solicitor, referred for taxation under the circumstances, but on the terms of the client admitting the cash payments contained in the settled account. *Nokes* v. *Warton.* vol. 5, p. 448

3. Taxation ordered, after payment under protest, the payment being insisted on as a condition for parting with a deed necessary to complete a purchase. *In re Tryon.* vol. 7, p. 496

4. Petition to tax a bill of costs after payment, on the ground of trifling overcharges, dismissed with costs. *In re Drake.* vol. 8, p. 123

5. To obtain the taxation of a bill of costs after payment, the petitioner must allege and prove specific items of overcharge, even if the payment has been made under protest and upon pressure. *In re Thompson.* vol. 8, p. 237

6. Where payment of a bill of costs has been obtained by undue pressure, a taxation may be directed on proof of overcharge, without shewing that such overcharges are so gross as to amount to fraud. *In re Wells.* vol. 8, p. 237

7. It is a "special circumstance" within the 6 & 7 *Vict.* c. 73, where, on paying off a mortgage, a solicitor produces his bill and insists on payment as a condition for immediate completion, though items

are objected to, and a taxation will be directed after payment, if there are apparent overcharges. *In re Wells.* vol. 8, p. 237

8. It is a "special circumstance," within the meaning of the 6 & 7 *Vict.* c. 73, where a solicitor produces his bill at the time appointed for the settlement of a transaction, and refuses to complete except on payment thereof. *In re Bennett.* vol. 8, p. 467

9. A mortgagee's solicitor would not part with the deeds until payment of his bill of costs, which had been delivered to the mortgagor's solicitor a month previously. Held, that this was not a sufficient case of pressure to induce the Court to order a taxation. *In re Jones.* vol. 8, p. 479

10. The single fact, that upon a transfer of a mortgage, a mere draft bill of costs of the mortgagee's solicitor is, for the first time, produced and then paid, is not of itself, without proof of pressure or fraud, a sufficient "special circumstance" to authorize taxation after payment, nor is that fact sufficient coupled with overcharges which are not so gross as to evidence fraud. *In re Fyson.* vol. 9, p. 117

11. Petition by mortgagor for taxation of the mortgagee's solicitor's bill, presented five months after it had been discharged by retainer, dismissed with costs, on the ground that it neither alleged any circumstances of pressure, nor any specific items of overcharge. *Dunt* v. *Dunt.* vol. 9, p. 146

12. The "special circumstances" under which a paid bill may be taxed, are such as exist or take place at the time of payment, or such as appear on the face of the bills themselves, where payment is extorted, and there are improper charges even of a small amount, or where the charges are so gross as to evidence fraud and oppression, taxation will be directed after payment. *In re Currie.* vol. 9, p. 299

13. It is imprudent for a client to pay, and for a solicitor to receive his bill of costs so closely upon their delivery, that they cannot have been deliberately and carefully perused and examined by the client; but this alone is not sufficient to warrant a taxation after payment. *Ibid.*

14. Mortgagee's solicitor delivered his bill to the mortgagor nearly three weeks before the day of settlement. At the meeting the bill was objected to; but the solicitor refused to complete without full payment, and the mortgagor paid it under protest. Held, that this was not sufficient to authorize a taxation, although there might be some overcharges. *In re Harrison.* vol. 10, p. 57

15. Payment of a bill of costs is, *primâ facie*, an admission of its correctness, and the client is bound to prove "special circumstances" to authorize its taxation. Such special circumstances are usually pressure, as where an immediate payment is required, at a time when it would be very inconvenient to the party paying, that any delay should occur in the completion of the business; and, secondly, error or over-charge in the bill. If the over-charges evidence fraud, very slight, if any, circumstances are necessary to induce the Court to order a taxation. *In re Harding.* vol. 10, p. 250

16. Taxation after payment ordered, on proof of pressure, and on shewing grounds for thinking that the bill would be considerably reduced on taxation. *In re Sladden.* vol. 10, p. 488

17. Proof of overcharge alone is insufficient to obtain the taxation of a paid bill; but it is a necessary ingredient. *In re Stirke.* vol. 11, p. 304

18. In *March*, 1847, a railway company agreed to purchase some property and to pay the vendor's costs. In *May*, 1847, possession was delivered. The bill of costs of the vendor's solicitor was delivered on the 13th of *June*, 1848, and a meeting, to complete the purchase, took place between the solicitors on the 20th of *June*, when objections were then made to the bill. It was then paid under protest, and with an intimation that it would be taxed, and a petition for taxation was presented a few days after. Held, that there was not sufficient evidence of pressure to open the matter by ordering a taxation. *In re Welchman.* vol. 11, p. 319

19. The possession of the papers in a cause is not a sufficient special circumstance to warrant the taxation of a bill delivered more than twelve months. *In re Gedye.* vol. 14, p. 56

20. A protest upon payment of a bill of costs had no effect. *Re Browne.* vol. 15, p. 61

21. A bill was delivered, and, after dispute, paid under protest, about seven weeks after, in order to release a fund, and pay a creditor who threatened execution. A petition was presented for taxation nearly twelve months after the delivery, alleging no specific items of overcharge. It was dismissed. *Ibid.*

22. Taxation of a bill paid under protest, on the ground of overcharges, and that the solicitor had refused to part with the title-deeds until payment, refused with costs, it not appearing how long the bill had been delivered before payment. *Re Mash.* vol. 15, p. 83

23. *A.*, the mortgagor's solicitor, sent a reconveyance to *B.*, the mortgagee's solicitor, for execution, unstamped. On the 23rd of *August*, *B.* delivered his bill of costs, which was objected to; and on the 10th of *September*, *A.* applied to *B.* for the loan of the deed to get it stamped, on his undertaking to return it, which was refused, and on the 18th of *September*

the mortgage and bill were paid. The mortgagee afterwards applied for a taxation, and the pressure relied on was, that he had been compelled to pay the bill in order to get the reconveyance stamped and avoid the penalties; and, secondly, that no taxation could be had in the long vacation. He also alleged overcharges, which were not clearly made out. The application was refused with costs. *Re Hubbard.* vol. 15, p. 251

24. Taxation ordered of an unpaid bill of costs, eighteen months after its delivery, the "special circumstances" being, that it was delivered long after application for it, on the eve of the client going abroad, and contained substantial overcharges, not acquiesced in. *Re Williams.* vol. 15, p. 417

25. On the day appointed for paying off a mortgage, the solicitor of the mortgagee refused to part with the title-deeds until payment of his bill of 18*l.*, which had been delivered two days previously. It was paid under protest. The Court refused a taxation, no pressing necessity for the title-deeds appearing, and no items of overcharge being distinctly shewn. *Re Finch.* vol. 16, p. 585

26. Where a considerable portion of a bill of costs is for business, which, in the exercise of an honest and fair discretion, ought never to have been transacted, the Court, although there be no serious amount of pressure, will order a taxation after payment. *Ibid.*

27. A bill of costs was delivered on the day appointed to complete the transfer of a mortgage. It was objected to, but the solicitor of the mortgagee refused to complete until payment. The mortgagor paid it, but it was afterwards ordered to be taxed. *Re Phillpotts.* vol. 18, p. 84

28. Where a client intends to pay a bill of costs at the meeting to complete a matter, the mere fact of the bill being then delivered and of his paying it without having had an opportunity of examining it, will not alone be sufficient to entitle the client to a taxation, but such a circumstance forms a material consideration. *Re Abbott.* vol. 18, p. 393

29. A mortgagee's solicitor's bill was delivered at the completion of the mortgage transaction, and the amount retained after objection. A petition, presented eleven months afterwards for taxation, was refused, although the bill contained an objectionable item of 20*l.* for procuration money. *Re Bayley.* vol. 18, p. 415

30. Taxation ordered of a paid bill of a mortgagee's solicitor in a mixed case of pressure and of improper items. *In re Rance.* vol. 22, p. 177

31. The mortgagee took legal proceedings against the mortgagor, whereby expenses were being incurred. The mortgagee's solicitor delivered his bill on the 25th of *December*, and the parties met to complete a transfer on the 29th of *December*. The bill contained a charge for an abstract, which was more than double what it ought to have been, but the solicitor refused to reduce it, and the bill was paid. It did not appear that any proposal had been made to settle the matter, and postpone the question of costs. The Court, considering that there had been both pressure and overcharge, ordered a taxation. *In re Rance.* vol. 22, p. 177

32. Bills of costs assumed to be, upon payment, taxable in equity, where the solicitor had retained them in his possession, and declined to produce them. *Re Loughborough.* vol. 23, p. 439

33. When a bill of costs is paid, the *onus* of proving overcharges is thrown on the client. *Re Towle.* vol. 30, p. 170

34. Charges for attendances, to the extent of eight on one day, are not sufficient to open a paid bill. *Ibid.*

35. A solicitor delivered his bill, which contained two columns of charges, the first of which amounted to 32*l.*, and the second (which was headed "If this bill be taxed, the following are the charges") amounted to 23*l.* The solicitor refused to deliver up the papers unless paid 32*l.*, and the client paid that sum under protest. A taxation was ordered, and the solicitor having refused to consent to an order of course, was ordered to pay the costs of a special petition for that purpose. *Re Lett.* vol. 31, p. 488

36. A client paid his solicitor's bill in *January*; he changed his solicitor two months and a half afterwards, and in *November* following he presented a petition for the taxation of the bill, on the allegation of simple overcharges. The application was refused. *Re Pugh.* vol. 32, p. 173

37. On a meeting in *June* to settle a purchase, the solicitor for the first time delivered his bill, and he insisted on payment before completion. It was paid under protest, and in *November* following a petition was presented for taxation, alleging items of overcharge. The Master of the Rolls ordered a taxation, and his decision was affirmed by the Lords Justices. *Ibid.*

TAXING MASTER (DISCRETION).

[*See* TAXATION (ITEMS).]

1. Under the common order for the taxation of costs, the Master is not authorized to take an account of pecuniary matters between the parties, which are foreign to the bill of costs; but *secus* where moneys are paid by the client on account of the bill of costs, or where, by agreement between the solicitor and

client, the moneys which come to the hands of the solicitor are to be applicable to the payment of the bill of costs. *Jones* v. *James*. vol. 1, p. 307

2. A motion for the taxation of a solicitor's bill, with special directions to disallow the costs of certain proceedings alleged to have been improperly taken by the solicitor, or with a qualification that the taxation was to be of the costs of such proceedings only as had been properly incurred, refused, as such objections may be taken advantage of under the common order for a taxation. *Wiggins* v. *Peppin*. vol. 2, p. 403

3. The Master, on evidence before him, allowed a few items on the taxation of a solicitor's bill for business, as to which there was a conflict whether the solicitor had authority to perform it. Held, that this was not a sufficient reason for permitting a review of the taxation. *In re Congreve*. vol. 4, p. 87

4. In *October*, 1839, a client obtained an order to tax his solicitor's bill. He commenced the taxation in *January*, 1840, and proceeded therein to a very considerable extent. A year and a half after, and before the report, the client applied to vary the order. Held, that, after his acquiescence, he came too late to alter the order, and too early to correct any erroneous principle acted on by the Master. *Tarbuck* v. *Tarbuck*. vol. 4, p. 149

5. Liberty given to except to the Master's report of taxation, being applied for on the ground of his disallowance of a third brief to the Attorney-General, the report was referred back to the Master for review. *Attorney-General* v. *Drapers' Company*. vol. 4, p. 305

6. An information related to two objects, one failed, and the decree dismissed so much of the information as related to it, without costs, and ordered the Defendant to pay the informant his costs of the suit. Held, that the Taxing Master was wrong in apportioning the general costs of suit between the two objects. Costs of process of contempt for not answering, not allowed in the taxation of costs of suit as between party and party. *The Attorney-General* v. *Lord Carrington*. vol. 6, p. 454

7. The Court will not interfere with the discretion of the Taxing Masters as to the *quantum* of fees to counsel. *Ibid.*

8. Special direction given on an order for taxation, that if the solicitor should be unable to establish any of the charges by reason of the death of his clerk, or the absence of the books and papers delivered to the client, the Taxing Master should report specially thereon. *In re Watts*. vol. 7, p. 491

9. Payment of a solicitor's bill, delivered at the last moment of settling a mortgage, being insisted on without any opportunity of examination being afforded, is a "special circumstance," within the meaning of the Solicitors Act. *In re Jones*. vol. 8, p. 479

10. The sum allowed for clerks' fees on taxation does not limit the sum which may be spontaneously given, but it does limit the sum which the solicitor can safely pay without the special direction or permission of the client. *Ex parte Cotton*. vol. 9, p. 107

11. The Court having determined to communicate with the Taxing Master as to a proceeding in his office, declined to receive an affidavit tendered by the parties, of what had there taken place. *Sturge* v. *Dimsdale*. vol. 9, p. 170

12. The fact of a petition being unopposed, is not, of itself, a sufficient reason for the disallowance of the costs of two counsel. *Sturge* v. *Dimsdale*. vol. 9, p. 176

13. The Taxing Masters have jurisdiction to determine questions of retainer. *In re Hair*. vol. 10, p. 187

14. In the taxation of costs as between solicitor and client the Taxing Master had disallowed the costs of two counsel in several applications to the Court. The Master, having used his discretion, and not proceeded on any general principles, a petition to review the taxation was dismissed with costs. Brief of pleading prepared for counsel after publication and before the cause had been set down, and which became useless, in consequence of a compromise before hearing, disallowed on taxation as between solicitor and client. *Friend* v. *Solly*. vol. 10, p. 329

15. Special retainer disallowed in the taxation of costs, as between party and party.

Transcript of shorthand writer's notes used on appeal disallowed on a taxation between party and party.

The general rule is, that the costs of two counsel only are allowed upon a taxation between party and party.

In the absence of sufficient reason, only one consultation ought to be allowed under the 120th order of *May*, 1845, and the Taxing Masters certified that the fact of one counsel being brought specially from another Court is not a ground for allowing an extra number. *Smith* v. *The Earl of Effingham*. vol. 10, p. 378

16. A charge in a solicitor's bill "for attending a great many times" is too vague, and, on taxation, the charge will be disallowed.

The costs of an abstract of a deed prepared to accompany a case submitted to counsel, disallowed under the circumstances.

A considerable portion of a charge for the attendance of a solicitor in town, at the request of his client, disallowed, on

the ground that the solicitor had failed to prove that the whole time was required for the business. *In re Pender.* vol. 10, p. 390

17. A client agreed to pay his solicitor three guineas a day, in addition to the usual charges of a solicitor, for his travelling and other expenses. The Court, being of opinion that, under the common order of taxation, the Master would take the agreement into consideration, Held, that its suppression, in obtaining an *ex parte* order was not irregular. *In re Eyre.* vol. 10, p. 569

18. Principles and practice in the Taxing Master's office and before the Court in cases of taxation. The Court will only determine questions on *items* in a bill of costs, which involves some principles, and not those relating to *quantum* only. *Re Catlin.* vol. 18, p. 508

19. A petition of a solicitor to review the Taxing Master's decision, as to specified items of charges for conferences, some of which had been reduced and others wholly disallowed, was dismissed with costs, the Court declining to enter into the merits of such matters. *Re Hubbard.* (No. 2.) vol. 23, p. 181

20. On an ordinary taxation, the Taxing Master had disallowed the costs of a deed of reconveyance from a benefit building society of property in a registered county, thinking that a receipt was sufficient under the 6 & 7 *Will.* 4, c. 34, s. 2. The decision was reversed by the Court. *Re Page.* (No. 2.) vol. 32, p. 485

21. The Taxing Masters do not act under the 40th Consolidated Order, r. 9, in relation to the unnecessary length of the pleadings, &c., unless directed by the order of reference. *Re Farington.* vol. 33, p. 346

22. A bill was dismissed with costs. Considerable costs had been incurred by the examination and cross-examination of witnesses in *Australia* under a commission. Held, that the Taxing Master must have regard to the rules of taxation there; but the Court refused to refer the taxation of that part of the bill to the proper officer in *Australia*. *Wentworth* v. *Lloyd.* (No. 2.) vol. 34, p. 455

TENANT IN COMMON.

[*See* JOINT TENANCY.]

1. The Court will restrain one tenant in common from the wilful destruction of the common property; but where a railroad company had obtained a lease from five out of six tenants in common, and had, contrary to the wishes of the remaining tenant in common, constructed a railroad on the property, which, at law, had been held to be an ouster, the Court refused to interfere by injunction to prevent the dissenting tenant in common removing the rails, &c., though the rent agreed to be paid by the company was three times the former rent. *Durham and Sunderland Railway Company* v. *Wawn.* vol. 3, p. 119

2. Gift in trust to be equally divided between *A.*, *B.* and *C.*, separate from "their" husbands, and for "their" sole use, and at "their" decease, to be divided amongst "their" daughters. Held, that *A.*, *B.* and *C.* each took one-third for life with remainder as to her one-third, to her daughters. *Willes* v. *Douglas.* vol. 10, p. 47

3. Bequest to *A.* for life, with remainder to *B.*, *C.* and *D.*, with a substitutional gift of their "respective shares," in case of the death of any of them. Held, that *B.*, *C.* and *D.* took as tenants in common. *Ive* v. *King.* vol. 16, p. 46

4. Bequest of personal estate to *A.* for life, remainder to the children of *A.* equally, and in default of issue of *A.*, upon trust to sell and divide equally amongst *B.* and *C.* and all their children "then" living, share and share alike. Held, that the gift was too remote, and that *B.* and *C.* and their children living at the death of *A.* took the personal estate as tenants in common absolutely. *Cormack* v. *Copous.* vol. 17, p. 397

5. *B.* died before *A.*, but nevertheless she was held to take a share both in the realty and personalty. *Ibid.*

6. The testator gave an annuity to *A.* for life, and the income of the residue to *B.* and *C.* "during their lives, as tenants in common." The gift over to their respective children was only after the deaths of *A.*, *B.* and *C.*, and though there was a provision for intermediate maintenance, it was only on a contingent event which never happened. *B.* died. Held, that *C.* was not, by implication or otherwise, entitled to more than half of the income for life. *In re Drakeley's Estate.* vol. 19, p. 395

7. Devise to trustees and their heirs, in trust for *A.* and his wife for their lives, and after the death of the survivor, to testator's four granddaughters, as tenants in common, during their respective lives, with benefit of survivorship, remainder to the trustees "and their heirs," upon trust to preserve contingent remainders, remainder to the issue male of the four granddaughters successively, remainder to the testator in fee. Held, that the granddaughters took for life as tenants in common, with survivorship to the survivors and survivor of them; and that after the death of the last survivor, their issue took several inheritances in tail. Held, estates tail. *Haddelsey* v. *Adams.* vol. 22, p. 266

8. A testator devised real estates to trustees for 500 years, in trust to pay life annuities, and the residue of the rents to his two sons, "in equal shares;" and, subject thereto, to his two sons in fee as joint tenants. Held, that during the term they were tenants in common, and, secondly, that the employment by the two sons of the estates in their partnership trade had not the effect of making them tenants in common of the fee. *Brown* v. *Oakshot.* vol. 24, p. 254

9. Leaseholds were conveyed to trustees, and it was declared that, when the settlor's eldest son attained twenty-one, they should be in trust for him, and that the same should be assignee accordingly, but so that the settlor's wish that his other children "might be allowed by the eldest son to *participate* with him in the same," should be observed by him. Held, that the younger children were entitled to equal shares with the eldest, as tenants in common. *Liddard* v. *Liddard.* vol. 28, p. 266

10. Under a will, *A.*, *B.*, *C.* and *D.* became entitled to a sum of stock as tenants in common. *C.*, the sole executor, transferred it into the joint names of *C.* and *D.* Afterwards, by the deaths of *A.* and *B.*, *C.* and *D.* became equally entitled to the shares of *A.* and *B.* Held, that *C.* and *D.* were tenants in common of the whole fund. *Eames* v. *Godwin.* vol. 31, p. 25

11. A receiver of the whole property granted at the hearing as between tenants in common, there being evidence that the Defendant, one of them, had excluded the rest. *Sandford* v. *Ballard.* (No. 2.) vol. 33, p. 401

12. *A. B.*, one of several tenants in common, had been in the personal occupation of part of the property. In a suit by another tenant in common for partition and an account of rents: Held, that unless *A. B.* were charged with an occupation rent, he could not be allowed for substantial repair and lasting improvements made by him on any part of the property. *Teasdale* v. *Sanderson.* vol. 33, p. 534

TENANT FOR LIFE.

[*See* LIFE TENANT.]

TENANT FOR LIFE AND REMAINDERMAN.

[*See* LIFE TENANT AND REMAINDERMAN.]

TENANT IN TAIL.

1. A decree directing the owner of a legal estate to do such acts as are requisite to bar the estate tail, but which are incomplete at his death, is not binding on the suceeeding issue in tail. *Frank* v. *Mainwaring.* vol. 2, p. 115

2. The first legatee of a *quasi* estate tail in personalty takes the absolute interest, notwithstanding a manifest and avowed intention to give a succession of limited interest. *Byng* v. *Lord Strafford.* vol. 5, p. 558

3. Eleven months after a tenant in tail attained twenty-one, he concurred with his father in barring the entail and resettling the family estates; the Court being of opinion that the father thereby took direct benefits proceeding from the son; that the property had not been resettled in a reasonable and proper mode, if the interest of the family alone was to be regarded; that in the preparation of the deed, the son had no professional assistance, and that the contents were not properly made known to him, set aside the arrangement. *Hoghton* v. *Hoghton.* vol. 15, p. 278

4. In a mortgage suit by a judgment creditor of a tenant in tail in possession, the latter was ordered to execute a disentailing deed, in order to give full effect to the Plaintiff's charge. *Lewis* v. *Duncombe.* vol. 20, p. 398

5. Parties in remainder held not bound by the proceedings in a suit to which the prior tenant in tail was a party, he having no interest to protect, and not having protected the interest of such remaindermen. *Alsop* v. *Bell.* vol. 24, p. 451

6. A testator made two wills, one in 1815 and the other in 1818; under both *A. B.* (an infant) was first tenant in tail, but the first tenant in remainder was *Thomas* under the first and *William* under the second will. In a suit against the tenant in tail, the heir and *William* the second will was established. *A. B.* died an infant, and without issue. Held, that though the inheritance was represented in the suit, *Thomas* was not bound by the decree, the suit expressly negativing his right, and he not being a party thereto. *Ibid.*

7. The assignee of a tenant in tail under the Insolvent Act (1 *Geo.* 4, c. 119) takes a mere life interest in the property, which is not enlarged by the estate tail being afterwards barred. *Sturgis* v. *Morse.* (No. 3.) vol. 28, p. 398

8. In 1825 *A. B.*, the tenant in tail of an estate, took the benefit of the then Insolvent Debtors Act (1 *Geo.* 4, c. 119), and conveyed all his estate and effects to the assignee. *A. B.*, in 1829, mortgaged the estate to *C. D.*, who had notice of the insolvency. The estate tail was barred in 1834. Held, that the interest of the assignee ceased on the death of *A. B.*, in

1844, and that the estate belonged to *C. D. Sturgis* v. *Morse*. (No. 3.) vol. 28, p. 398

9. The entail of lands to be purchased with rents hereafter to become due to trustees may be barred under the statute 3 & 4 *Will.* 4, c. 74, s. 71. *Fordham* v. *Fordham*. vol. 34, p. 59

TESTAMENTARY EXPENSES.

The expression "testamentary and other expenses under this my will" held to include the costs of a suit to administer the estate. *Webb* v. *De Beauvoisin*. vol. 31, p. 573

TIMBER.

1. *A.*, on his marriage, settled his estate on himself, for life, "without impeachment of or for any manner of waste, save and except spoil or destruction, or voluntary or permissive waste, or suffering houses and buildings to go to decay, and in not repairing the same." Held, that he was entitled to cut all such timber (except ornamental) as the owner of the estate in fee simple, having due regard to his present interest and to the permanent advantage of his estate, might properly cut in a due course of management. *Vincent* v. *Spicer*. vol. 22, p. 380

2. *A.* was tenant for life without impeachment of waste, with remainder to her issue in tail, with remainder to *B.* for life, with remainder to his issue in tail, with remainder to *B.* in fee. The Court directed some timber to be cut in the life of *A.*, and the produce to be invested. Both *A.* and *B.* died without issue. Held, as between the heir and executor of *B.*, that the timber money was realty, and belonged to the heir. *Field* v. *Brown*. vol. 27, p. 90

3. A tenant for life, without impeachment of waste, in order to preserve the timber, assigned for valuable consideration "all timber and timber-like trees then growing and being, and which should thereafter grow and be, upon the estate." Held, that this included both ordinary timber, and that which, by the custom of the county, was considered timber, and that the thinnings, and the right of determining what were proper thinnings, belonged to the grantees. *Gordon* v. *Woodford*. vol. 27, p. 603

4. An agreement entered into between *A. B.* (the assignee of a tenant for life without impeachment of waste) and the Defendants (the remaindermen) by which it was agreed, 1st, that *A. B.* should be entitled to the timber as if cut in *August* previous; 2ndly, that the Defendants should carry out the agreement; 3rdly, that *A. B.* should have no greater right than he had in *August*; 4thly, that *A. B.* should not cut the timber under *December*. Held, that the remaindermen received no consideration for this agreement, and that it was *nudum pactum*. *Cochrane* v. *Willis*. vol. 34, p. 359

5. *A. B.* was tenant in fee simple of an estate, subject to an executory devise over in the event of his death under twenty-one without issue. During the minority of *A. B.*, timber, which was deteriorating, was cut with the sanction of the Court. *A. B.* died under twenty-one, without issue. Held, that the produce of the timber passed, as personalty, to his legal personal representative. *Dyer* v. *Dyer*. vol. 34, p. 504

6. The owner of woodlands had been accustomed, every year, to cut about one-twelfth of the underwood and also such of the trees on the same ground as were likely to obstruct and prejudice the growth of the timber. Held, that the tenant for life under his will was entitled to the produce both of the underwood and trees cut according to that custom. *Earl Cowley* v. *Wellesley*. vol. 35, p. 635

7. The trustees of a will felled some trees in the woodlands for the purpose of improving the growth of those remaining, but during the testator's lifetime the trees had not been thinned. Held, as between tenant for life and remainderman, that the produce was capital and not income. *Ibid.*

TIME.

[*See* TIME (FOR AMENDMENT). TIME (FOR ANSWER), TIME (FOR APPEARANCE), TIME (FOR EXCEPTIONS), TIME OF THE ESSENCE OF THE CONTRACT.]

1. A party ordered to take a step within a fixed time, or that the bill should be dismissed, if desirous of an extension of the time, must give notice of motion, so as to enable him to bring it on before the expiration of the time fixed. *Lord Huntingtower* v. *Sherborn*. vol 5, p. 380

2. Writs of attachment for want of answer, though regularly issued, discharged, and time given the Defendants to answer on payment of costs, the Defendants having had reasonable grounds for thinking that an answer would not be required without previous intimation. *Siderfield* v. *Thatcher*. vol. 11, p. 201

TIME (FOR AMENDMENT).

[*See* AMENDMENT.]

1. A Plaintiff submitted to a demurrer, and obtained an order of course to amend,

undertaking to amend within three weeks; he did not comply with the undertaking, but after the expiration of the three weeks obtained a second order of course to amend upon similar terms. No answer having been filed: Held, that the second order was not irregular. *Nicholson* v. *Peile.* vol. 2, p. 497

2. Under all orders to amend a Plaintiff must amend within fourteen days, as where he obtains leave to amend on the allowance of a demurrer, and no time is then limited. *Semble. Armistead* v. *Durham.* vol. 11, p. 428

TIME (FOR ANSWER).

1. Where a bill is amended before answer, the time for answering does not run from the date of amendment. *Stanley* v. *Bond.* vol. 6, p. 420
2. Proceedings on a cross cause were stayed, till the Defendant in the original cause had fully answered. The answer in the original cause was found sufficient, but some documents, though ordered, had not been produced, their production being the subject of a pending appeal. The Court, overruling the decision of the Master, gave the Defendant in the cross cause an unconditional order for time to answer, with liberty to extend it. *Holmes* v. *Baddeley.* vol. 7, p. 69
3. An order of the Master, giving the Defendant three weeks to answer after the Plaintiff had amended his bill, which was defective for want of parties, discharged as irregular. *Reynell* v, *Reynell.* vol. 7, p. 82
4. Time for answering amended bill under old practice (see Order 37, 39). *Rigby* v. *Rigby.* vol. 9, p. 311
5. The first application for time to answer is not of course, but must (unless the facts be admitted by the Plaintiff) be supported by affidavit shewing sufficient cause and due diligence. *Brown* v. *Lee.* vol. 11, p. 162
6. Bill filed 9th of *February*, time to answer expired on the 30th of *March*, when a month's time was given. A second application for time was refused by the Master on the 3rd of *May*, but, on appeal, three weeks were given by the Court on the 22nd *May*. *York and North Midland Railway Company* v. *Hudson.* vol. 13, p. 69
7. On applications for time to answer, it must be considered, that the answer is necessary, not only for giving a discovery to the Plaintiff, but to enable the Defendant to state the nature of his defence to the suit. *Ibid.*
8. In a special case, the time for answering was enlarged on five successive occasions. *Byng* v. *Clark.* vol. 13, p. 92
9. Upon an application for time to answer, the Court relies on the statement of counsel, as to the necessity of further indulgence. *Byng* v. *Clark.* vol. 13, p. 92
10. In a suit to stay proceedings at law, a Defendant obtained time to answer, and then pressed on the action, and obtained judgment. After a very considerable delay, he again applied for further time to answer; but held, that as he came for an indulgence, it could only be granted upon the terms of staying execution in the action. *Zulueta* v. *Vinent.* vol. 15, p. 575

TIME (FOR APPEARANCE).

1 A decree was taken by default in consequence of the negligence of the clerk of the Defendant's solicitor. The Court refused to restore the cause. *Flower* v. *Gedye.* vol. 23, p. 449
(See *Frost* v. *Hilton.* vol. 15, p. 432)

TIME (FOR EXCEPTIONS).

Time allowed for exceptions where a Defendant is ordered to answer amendments and exceptions together. *Lloyd* v. *Clark.* vol. 6, p. 467

TIME OF THE ESSENCE OF THE CONTRACT.

[*See* ABANDONMENT OF CONTRACT, SPECIFIC PERFORMANCE (REFERENCE AS TO TITLE).]

1. The long vacation is not to be excepted in the computation of the six days for referring exceptions for impertinence to a bill. *Sloggett* v. *Sorel.* vol. 5, p. 378
2. Though time be not of the essence of a contract, it may be made so by notice, where there has been great and improper delay on one side in completing. It may, however, be waived by proceeding in the purchase after the expiration of the time fixed by the notice. *King* v. *Wilson.* vol. 6, p. 124
3. On a sale under the Court in *June*, 1839, it was provided by the conditions, that the abstract should be delivered in twenty-one days, that the purchaser should be entitled to the rents from *October*, and pay his purchase-money in *November*, and if "from any cause whatever" it should not be paid at that time, he should pay interest at five per cent. The vendors were unable to deliver the abstract within the time, and there was great delay and difficulty, on their part, in making out their title, which was not complete till 1845. The purchaser had entered into possession. On a motion made in 1845 to pay the purchase-money and interest into Court, the Court held that it could

not relieve the purchaser from payment of interest, but made the order without prejudice to any application for compensation. *Greenwood* v. *Churchill.* vol. 8, p. 413

4. Though time may not be of the essence of the contract, yet, upon unreasonable delay on the part of a vendor in completing, the purchaser, upon giving notice, may rescind the contract. *Benson* v. *Lambe.* vol. 9, p. 502

5. Upon a sale under the Court, on the 14th of *September*, there was a condition that the purchaser should confirm the report, and before the 10th of *November* pay his purchase-money and interest from the 29th of *September*, and be entitled to the rents from that time; and "under no circumstances" was he to be excused paying interest from that time. The purchaser was unable to obtain and serve the order of confirmation until the 29th of *November*. The abstract was delivered on the 6th of *December*, and the requisition finally answered on the 17th of *January*. Held, that there was no such delay on the part of the vendor as to release the purchaser from payment of interest. *Rowley* v. *Adams.* vol. 12, p. 476

6. A purchase was to be completed on a given day, when the purchaser was to have possession, and it was provided, "that if, from any cause whatever," the purchase-money should not then be paid, the purchaser should pay interest. A delay of six months occurred from the default of the vendor in not furnishing proper extracts. Held, that the purchaser must pay interest, unless he gave up the rent, during that period. *Cowpe* v. *Bakewell.* vol. 13, p. 421

7. The time specified for the delivery of the abstract, held, in equity, not to be of the essence of the contract. *Roberts* v. *Berry.* vol. 16, p. 31

8. On a sale on the 22nd *July*, the conditions provided that the abstract was to be delivered within seven days, and objections be taken within seven days after the delivery, or be deemed waived; and the purchase to be completed on or before the 8th of *August*. The abstract was not delivered until twelve days after, and the purchaser wrote to rescind the contract. Held, that in equity the time for delivery was not of the essence of the contract, and a demurrer to a bill by the vendors for specific performance was overruled by the Master of the Rolls and Lords Justices. *Ibid.*

9. In equity, the time appointed for the completion of a contract is not, as at law, of the essence of the contract; but it may be made so by direct stipulation or necessary implication. *Parkin* v. *Thorold.* vol. 16, p. 59

10. Though time be not originally an essential part of a contract, yet either party may, by notice, insist on its being completed within a reasonable time. *Parkin* v. *Thorold.* vol. 16, p. 59

11. A tenant was to have a purchasing clause at any time within nine years, by giving three months' notice. He gave the notice at the end of four years, and delays occurring, the three months elapsed. Afterwards, the landlord threatened hostile measures to compel a completion, but subsequently he gave notice, that unless the purchase should be completed within six weeks, he should treat the notice as void and the right of purchasing as forfeited. The purchase was not completed within the six weeks. Held, first, that though a conditional right to purchase must be strictly complied with, yet time was not in this case of the essence of the contract; secondly, that if it had been, it was waived by the landlord's insisting on the contract after the expiration of the three months; thirdly, that time was not made of the essence of the contract by the notice; and fourthly, that six weeks was not, under the circumstances, a reasonable time. *Pegg* v. *Wisden.* vol. 16, p. 239

12. On the sale of an advowson, the purchase-money was to be paid on a fixed day, and the conveyance to be executed, but, in default of payment, the purchaser was to pay interest. The purchase was not completed, through the default of the vendor. Held, that no interest was payable. *Weddall* v. *Nixon.* vol. 17, p. 160

13. A condition, that "if, from any cause whatever, the purchase shall not be completed on a day named, the purchaser shall pay interest on the purchase-money, from that day till the completion of the purchase," is inoperative, where a good title has not been shewn by the default of the vendor within the time stipulated; but it is operative where it is the result of accident, or of something which could not have been guarded against by the vendor. *Sherwin* v. *Shakespeare.* vol. 17, p. 271

14. Upon the sale of a reversion, interest is payable from the time appointed for completion. *Bailey* v. *Collett.* vol. 18, p. 179

15. On a sale by the purchaser under a condition that "if, from any cause whatever, the purchase-money was not paid on a given day, interest would be payable." Held, that a delay caused by requiring proof of the fact of payment of the before-mentioned debts and legacies, did not prevent the operation of the condition. *Storry* v. *Walsh.* vol. 18, p. 559

16. When a mortgagee agrees to take a portion of his debt in lieu of the whole, upon payment on a given day the Court

will not relieve against the effect of its nonpayment on that day.

D. was indebted to *C.* in 69,000*l.* By a deed made between *D.*, *C.* and *S.* (a surety), *C.* covenanted that if *D.* or *S.* should pay him 38,000*l.* on a day named, he would accept it in full satisfaction of the whole debt. *D.* covenanted to pay it on the day, and *D.* and *S.* covenanted to pay interest on it to the day and afterwards. Default was made in payment, but interest was, for four years afterwards, received by *C.* on the 38,000*l.* Held, that *D.* was liable for the whole debt of 69,000*l.*, and was entitled to no equitable relief against the default in payment on the day fixed. *Ford* v. *The Earl of Chesterfield.* vol. 19, p. 428

17. The time for paying the deposit may be made an essential term for entering into a contract for sale of an estate. *Honeyman* v. *Marryat.* vol. 21, p. 14

18. In contracts for the lease of working mines, time, though not named, is, from the fluctuating nature of the property, considered as of the essence of the contract, and the intended lessee may therefore fix a reasonable time for completion, and, on the lessor's default, may rescind the contract. *Macbryde* v. *Weekes.* vol. 22, p. 533

19. Letters-patent dated the 26th of *February*, 1855, were, under the 16 *Vict.* c. 5, s. 2, to cease "at the expiration of three years from the date thereof, unless there be paid, before the expiration of the said three years," an additional stamp of 50*l.* This stamp duty was paid on the 26th of *February*, 1858. Held, that the payment had been made within the time, and that the patent was still subsisting. *Williams* v. *Nash.* vol. 28, p. 93

20. Time made of the essence of a contract by a special condition. *Hudson* v. *Temple.* vol. 29, p. 536

21. *A.* agreed to sell to *B.* a piece of land. *A.* was to make a new road, of which *B.* was to have the use, and *B.* was to expend 3,000*l.* in building a house on the property. The contract was to be completed on the 1st of *August*, interest was payable if not completed on that day, and time was declared to be of the essence of the contract as regarded the making of objections to the title. The contract not having been completed, the vendor on the 4th of *August*, gave notice that he rescinded the contract unless completed within a month. At this time there only remained two substantial requisitions, and which the vendors were taking steps to comply with. Held, that time was not of the essence of the contract; secondly, that the notice was not reasonable. *Wells* v. *Maxwell.* (No. 1.) vol. 32, p. 408

22. By a contract for the sale of an estate, it was stipulated "that if, from any cause whatsoever, the purchase should not be completed," on a day named, the purchaser should pay interest on his purchase-money from that day until the completion. It became necessary to institute a suit to rectify the power under which the vendors sold, in order to make a good title, and a delay occurred in completing. There being no wilful default on the part of the vendor: Held, that the purchaser was bound to pay interest, and was entitled to the corresponding rents. *Lord Palmerston* v. *Turner.* vol. 33, p. 524

23. Where conditions of sale fix periods for the delivery of the abstract, the completion of the purchase, and from which interest shall run, "if, from any cause whatever," the purchase should not be completed, the purchaser must pay interest from the time fixed, though the completion is delayed beyond the time specified, in consequence of the state of the title, if there be no fraud or wilful delay on the part of the vendor. *Vickers* v. *Hand.* vol. 33, p. 630

24. By conditions of sale the abstract was to be delivered before the 18th of *February*, the purchaser was to take the rents from the 25th of *March*, and the purchase was to be completed on the 24th of *June*. And if, from any cause whatever, the completion should be delayed after that time, the purchaser was to pay interest at 5*l.* per cent. Imperfect abstracts were delivered, and a complete abstract was not delivered until the 17th of *June*. Further delay having occurred in completing, the vendor deposited the purchase-money at a banker's, and gave notice in *August* that he would pay no interest. Held, that as there was no fraud or wilful delay on the part of the vendors, and as the delivery of an imperfect abstract arose simply from the state of the title, the purchaser must pay interest. *Ibid.*

25. Where a purchaser agrees that if, "from any cause whatever," the purchase shall not be completed on the day fixed, he will pay interest, the rule is this: he must pay such interest, unless the delay has been occasioned by any misconduct on the part of the vendor. *Williams* v. *Glenton.* vol. 34, p. 528

TITHE COMMUTATION ACT.

1. A confirmed award under the "Tithe Commutation Act" is final as between the tithe owners and tithe payers, but does not exclude from further investigation a case between the tithe owners themselves, in which there was, before the award, a just title to tithes, which by accident and

mistake was not brought forward till after the award was made.

Thus, by an award, made with the concurrence of *A.*, the patron, the whole rent-charge was made payable to *B.*, the rector, *A.* being at the time entitled to one-half of the corn tithes, but ignorant of his rights. Held, that *A.* might have relief in this Court as against *B.* *Clarke* v. *Yonge.* vol. 5, p. 523

2. *A.* and *B.* were entitled to tithes in equal moieties. *B.*, under mistake, received the whole, a bill by *A.* against *B.* for his moiety was dismissed with costs *Ibid.*
3. The right to tithes, as against an ecclesiastical corporation aggregate, is barred under the 3 & 4 *Will.* 4, c. 27, by non-payment for twenty years. *The Dean and Chapter of Ely* v. *Bliss.* vol. 5, p. 574
4. The right to the tithes of an allotment generally follows the right to the old tenement, in respect of which the allotment is made. *Blackford* v. *Kirkpatrick.* vol. 6, p. 232
5. By the common law, the rector has a right to all such tithes as the vicar is not proved to be entitled to, and the title of the vicar must rest either on direct proof of an endowment, or on an endowment to be inferred by prescription or usage. *Attorney-General* v. *Ward.* vol. 11, p. 203
6. Tithes of peas and beans have been held to be comprised in the description of "tithes of corn." *Ibid.*

TITLE OF PLEADINGS.

[*See* IRREGULARITY.]

TITLE TO PROPERTY.

[*See* ABSTRACT, ACCEPTANCE OF TITLE, SPECIFIC PERFORMANCE (REFERENCE AS TO TITLE), STATUTE OF LIMITATIONS.]

1. A good title may be made to an estate, although the origin cannot be shewn by any deed or will; but it must be shewn, that there has been such a long uninterrupted possession, enjoyment and dealing with the property, as afford a reasonable presumption that there is an absolute title in fee simple. *Cottrell* v. *Watkins.* vol. 1, p. 361
2. *F.* and *W.*, as solicitors for the tenant for life, held the title-deeds, which afterwards passed into the possession of *W.* and *C.*, their successors. The tenant for life died, and the estate then stood limited first to *F.* and *W.* for 500 years, to secure a sum of 2,000*l.* with remainder to trustees for 600 years, to secure a jointure and portions with remainder to *A. B.* in tail. *A. B.* being an infant, a suit was instituted on his behalf, in which the 2,000*l.* was raised on the security of the term. Upon that occasion *F.* and *W.* covenanted with the mortgagees to produce the title-deeds from time to time, and not to part with them; but they were relievable from the covenant on certain terms. A receiver was appointed in the suit, and the Court directed the costs of the solicitors of the suit to remain charges upon the estate at interest. *W.* and *C.* were solicitors in the suit for *A. B.* *A. B.*, upon coming of age, presented a petition for the delivery of the title-deeds. Held, that (independently of the covenant) *W.* and *C.* held the deeds for *A. B.*, and not for the termors, but the covenant having been entered into for the benefit of the infant, *F.* and *W.* were not bound to part with the deeds until released from their covenant. Held also, that *W.* was not entitled to hold the deeds for the trustees of the term of 600 years, or for any costs other than those of seeing himself properly released from the covenant, and that he had no right to require them to be delivered to the receiver in the cause. *Hotham* v. *Somerville.* vol. 5, p. 360
3. Upon the sale of a leasehold for lives, expressed to have been granted by a corporation in consideration of the surrender of a prior lease, the title to the surrendered lease must be shewn. *Hodgkinson* v. *Cooper.* vol. 9, p. 304
4. The Defendant sold and conveyed to the Plaintiff some undivided shares in various properties. Disputes afterwards arose as to what shares had been purchased. They agreed to settle all these disputes, and signed a written agreement that the Plaintiff should pay the Defendant 9,500*l.*, and that the Defendant should execute such deeds as the Plaintiff should require for the conveyance of the estates. Upon a bill for specific performance, Held, that the Defendant was not bound to deduce any title to the property. *Godson* v. *Turner.* vol. 15, p. 46
5. A purchaser must take a title, though depending on the invalidity of a voluntary conveyance, as against a purchaser for valuable consideration, with notice. *Butterfield* v. *Heath.* vol. 15, p. 408
6. Distinction between shewing a good title on the abstract and verifying it. *Sherwin* v. *Shakespeare.* vol. 17, p. 267
7. Any remainderman whose estate is vested may maintain a bill against the tenant for life, for the sole purpose of production and inspection of the muniments of title. If the tenant for life

suggests that the purpose for which production is required is improper, the *onus* is on him to shew it. *Davis* v. *Earl of Dysart.* vol. 20, p. 405
(*Pennell* v. *Earl of Dysart.* vol. 27, p. 542)

8. This right, however, only exists when the title of the remainderman is undisputed; for if there be a reasonable cause for litigating his title, he cannot compel production. *Ibid.*
9. The mortgagee of *A.* (an alleged remainderman) instituted a suit against *B.* (the alleged tenant for life) for the mere production of the title-deeds. *B.* set up a *bonâ fide* objection, that *A.*'s estate had become forfeited, and also that, by the terms of the mortgage deed, the estates in question were not comprised therein. The assignees of *A.* (who had become bankrupt), though interested in the latter question, were not parties to the suit. The Court declined adjudicating, incidentally, on the Plaintiff's right, and dismissed the bill with costs. *Ibid.*
10. By the conditions of sale, the title-deeds were to be delivered to "the purchaser of the largest lot." *A.* purchased the largest lot in value and extent, but *B.* purchased several lots, whose aggregate value and extent exceeded those of *A.*'s lot. Held, that *A.* was entitled to the custody of the deeds. *Scott* v. *Jackman.* vol. 21, p. 110
11. A title depending on the validity of a purchase by a solicitor from his client forced on an unwilling purchaser, on proof of the validity of the transaction, though given in the absence of the client. *Spencer* v. *Topham.* vol. 22, p. 573
12. On the purchase of an underlease, it is not a valid objection to the title, that the underlease *may become forfeited* by the non-performance of the covenants in the original lease. *Hayford* v. *Criddle.* vol. 22, p. 477
13. The legal tenant for life is entitled to the custody of the title-deeds, and they will not be ordered to be deposited in Court, merely because the tenant for life is heir-at-law, and claims the immediate reversion against the residuary devisee. *Garner* v. *Hannyngton.* vol. 22, p. 627
14. When a sale is directed, every party to the suit having the title-deeds is bound to facilitate the sale. *Knott* v. *Cottee.* (No. 4.) vol. 27, p. 33
15. When money in Court is subject to a trust for investment in land, and the tenant for life enters into a provisional contract for the purchase of an estate, subject to conditions of sale, the Court makes a general reference as to the title, and not whether a good title can be made subject to the conditions of sale. *Meyrick* v. *Laws.* vol. 34, p. 58

TOLLS.

[*See* MORTMAIN.]

1. Mortgagees of the tolls of the *Birkenhead* Docks held to have a priority over judgment creditors of the concern. *Ames* v. *Trustees of the Birkenhead Docks.* vol. 20, p. 332
2. In a suit by mortgagees of a dock against the trustees and a judgment creditor, the chairman was appointed receiver of the tolls, with direction to pay into Court the balance, after paying the expenses of carrying on the concern and the interest on the mortgages. A judgment creditor having afterwards proceeded to attach the tolls under "The Common Law Procedure Act," was restrained by injunction. *Ibid.*
3. It was insisted, that the possession of the receiver was either that of the dock company or of the mortgagees, and that in the former case the judgment creditor ought not to be restrained in the exercise of his legal remedies against the company; and in the second, that the mortgagees had no power, under the acts of parliament, to carry on the concern, but this argument was held unavailing. *Ibid.*

TRADE MARKS.

1. The ground on which the Court protects trade marks is, that it will not permit a party to sell his own goods as the goods of another; a party will not, therefore, be allowed to use names, marks, letters, or other *indicia* by which he may pass off his own goods to purchasers as the manufacture of another person. *Perry* v. *Truefitt.* vol. 6, p. 66
2. Injunction to restrain a party from making and sending to *Turkey* watches having the Plaintiff's name or the word "warranted" engraved thereon in Turkish characters in imitation of the Plaintiff's watches, *Gout* v. *Aleploglu.* vol. 6, p. 69, n.
3. A blacking manufactory had long been carried on under the firm of *Day & Martin*, at 97 *High Holborn.* The executors of the survivor continued the business under the same name. A person of the name of *Day* having obtained the authority of one *Martin* to use his name, set up the same trade at 90½ *Holborn Hill*, and sold blacking as of the manufacture of *Day & Martin*, 90½ *Holborn Hill*, in bottles and with labels having a general resemblance to those of the original firm. He was restrained by injunction. *Croft* v. *Day.* vol. 7, p. 84
4. Principles on which the Court interferes to prevent the use of trade marks. *Ibid.*
5. The Plaintiff invented and sold a me-

dicine under his own name. The Defendant also made and sold a similar medicine, and on his labels, he used the Plaintiff's name and certain certificates given of the efficacy of the Plaintiff's medicine, in such an ingenious manner, as, *primâ facie*, though not in fact, to appropriate and apply them to his own medicine. Held, that although there were other differences in the mode of selling, the proceeding was wrongful, and the Defendant was restrained by injunction. *Franks* v. *Weaver*. vol. 10, p. 297

6. The Plaintiff *Thomas Holloway* sold a medicine of "*Holloway's* pills." The Defendant *Henry Holloway* commenced selling pills as "*H. Holloway's* pills," but in boxes, similar to the Plaintiff's, and with a view of passing off his pills as the Plaintiff's. He was restrained by injunction. *Holloway* v. *Holloway*. vol. 13, p. 209

7. In cases of alleged colourable imitations of trade marks, the Court has not to consider whether manufacturers could distinguish between the articles, but whether the public would probably be deceived by the alleged spurious imitation. *Shrimpton* v. *Laight*. vol. 18, p. 164

8. The Defendant innocently used the Plaintiff's trade marks, and, on being served with the bill, he removed the labels, and gave an undertaking not to sell any more, but refused to pay the costs. The suit was continued to a hearing, and the account of profits, which were very trifling, was waived. Held, that the Defendant must pay the whole costs of suit. *Burgess* v. *Hills*. vol. 26, p. 244

9. A suit was instituted to restrain the user of a trade mark, and for an account. No application was made to the Defendant before suit, and the Defendant said he would have desisted if applied to. At the hearing, the account was abandoned, but a perpetual injunction was granted. Held, that the Defendant must pay the costs. *Burgess* v. *Hately*. vol. 26, p. 249

10. A Defendant is liable, in equity, to account for the profits made by the user of a Plaintiff's trade mark, though, at the time of the user, he may have been ignorant of the rights and of the existence of the Plaintiff, and notwithstanding that, to entitle him to recover damages at law, it may be necessary to prove a *scienter*. *Cartier* v. *Carlile*. vol. 31, p. 292

11. A person innocently selling goods bearing the spurious trade mark of another person is not, in equity, liable to account for the profits made thereby, but the owner of the trade mark is entitled to an injunction. *Moet* v. *Couston*. vol. 33, p. 578

12. Wine marked with a counterfeit of the Plaintiff's brand had been imported into this country, and *A. B.* had made *bonâ fide* advances on the security of the dock warrants. An injunction having been granted to restrain the dock company parting with it, the Court, on the application of *A. B.*, ordered the wine to be delivered to him, on the counterfeit brand being removed, but made *A. B.* pay the costs of the application. The Court held that the priority of charges on the wine were, first, the expenses of the dock company; secondly, *A. B.*'s claim; and thirdly, the Plaintiff's costs of suit. *Ponsardin* v. *Peto*; *Ex parte Uzielli*. vol. 33, p. 642

13. Spurious champagne, having a counterfeit brand, was deposited with wharfingers, who, having notice of the fraud and that an injunction was about to be applied for, refused to deliver it over to the holder of the dock warrants. The Court, upon bill filed, restrained an action for damages for the non-delivery, commenced by the holder of warrants against the wharfingers. *Hunt* v. *Maniere*. vol. 34, p. 157

TRANSFER.

[*See* SHARES (TRANSFER).]

1. By a local and personal act, transfers of debentures were to be by indorsement by deed and in a given form, and were to be entered in the books of the company, and "after such entry, *but not till then*, the assignee was to be entitled to the benefit." Held, that this did not apply to a transfer by act of law, as in the case of bankruptcy. *Lane* v. *Smith*. vol. 14, p. 49

2. When two suits are instituted for the same object in different Courts, the parties ought themselves to apply to the Lord Chancellor to have them transferred to one Court. If they do not, the Court itself will apply to the Lord Chancellor for that purpose. *Swale* v. *Swale*. vol. 22, p. 401

TRAVERSING ORDER.

1. The production of a writ of attachment for want of answer with the sheriff's return, is sufficient evidence to ground the traversing order. *Evans* v. *Williams*. vol. 4, p. 485

2. An application by the Plaintiff to take a traversing order off the file, cannot be made *ex parte*. *Simmons* v. *Wood*. vol. 5, p. 390

3. The Plaintiff filed a traversing order. The Defendant afterwards made default

in appearing at the hearing. Held, first, that the Plaintiff was not entitled to take, as of course, such decree as he could abide by, but must go through his case and take such decree as to the Court might appear just; and secondly, that service of the traversing order must be proved by affidavit. *Evans* v. *Williams.* vol. 6, p. 118

4. Traversing note, obtained *ex parte* by the Plaintiff, with notice that the Defendant's answer had been sworn, discharged, but the Defendant ordered to pay the costs. *Rigby* v. *Rigby.* vol. 6, p. 265

5. Order for substituted service of a traversing note made, without proof that the Defendant was within the jurisdiction. *Hunt* v. *Niblett.* vol. 25, p. 124

TRUST AND TRUSTEE.

[*See* BREACH OF TRUST, CO-TRUSTEE'S LIABILITY, INDEMNITY, NEW TRUSTEES, PRECATORY TRUST, RELEASE, TRUST (CREATION), TRUST (DEVOLUTION), TRUST (DURATION), TRUSTEE ACT, TRUSTEE (DISCRETION), TRUSTEE (LIABILITY), TRUSTEE (PROFITING BY TRUST), TRUSTEE (PURCHASING), TRUSTEE RELIEF ACT, TRUSTEES' COSTS, TRUSTEES' DISCHARGE, TRUSTEES (NUMBER OF), TRUSTEES' RECEIPTS.]

1. The Irish Society held to be trustees for public purposes and not accountable to the companies of *London*, notwithstanding the latter were, after providing for the public objects, entitled to the surplus revenues of the estate vested in the former. *Skinners' Company* v. *The Irish Society.* vol. 7, p. 593

2. The statute of the 27 *Eliz.* c. 20, authorized the corporation of *Plymouth* to construct a watercourse or conduit, for bringing a supply of fresh water from a distance to *Plymouth* for public objects, as for the supply of the ships and town and to scour the haven. Mills were erected on the watercourse, and the corporation afterwards conveyed away a portion of their interest in the leat. Held, that the corporation had undertaken the performance of a public trust, and could not divest themselves of the means of fully executing it; that the primary duty of the corporation was to provide for the public objects contemplated by the act; and that the surplus water only, after satisfying the public purposes, could be applied to the use of the mills. The Court also considered it to be doubtful, whether the corporation could alienate the watercourse, or any part, for satisfying their own debt. *Attorney-General* v. *The Corporation of Plymouth.* vol. 9, p. 67

3. Trustees cannot set up, as against their *cestuis que trust* the adverse title of third parties. *Newsome* v. *Flowers.* vol. 30, p. 461

TRUST (CREATION).

[*See* CONSTRUCTIVE TRUST, PRECATORY TRUST, VOLUNTARY TRUST.]

1. Settlement of husband's estate on his marriage, in trust to pay the rents, &c., "unto or for the maintenance and support of the husband, wife, and children, or otherwise, if the trustees should think proper to permit the same to be received by the husband during his life, without power to charge, &c.," on the bankruptcy of the husband. Held, that a trust had been created for the maintenance and support of the wife and children out of the property during the husband's life. *Page* v. *Way.* vol. 3, p. 20

2. *A. B.*, the *cestui que trust* of money in the hands of a trustee, by deed, without consideration, directed part of the dividends to be paid by him for the maintenance of an infant, a stranger to *A. B.*, and covenanted to indemnify him, and agreed to allow the same out of the dividends of the trust fund. The trustee accepted the new trust, and acted upon the deed. Held, that there was a valid executed trust created, which *A. B.* could not revoke. *Rycroft* v. *Christy.* vol. 3, p. 238

3. A testatrix gave her personal estate to *B.* for the benefit of *B.*'s daughters. *B.* invested the produce, together with 1,000*l.* of his own moneys, in the funds in his own name, and afterwards treated and admitted the aggregate fund as held in trust for his daughters. On the death of *B.* the fund was found mixed with like funds of his own. Held, that under the circumstances there was sufficient to constitute a trust of the 1,300*l.* in favour of the daughters. *Thorpe* v. *Owen.* vol. 5, p. 224

4. Trustees, with the consent of *A. B.*, the tenant for life, had a power to sell the trust estate, and invest the produce in other real estate. In 1810 *A. B.*, with the concurrence of the trustees, sold the estate for 8,440*l.* and received the purchase-money. About the same time (but whether with the concurrence of the trustees was not proved), *A. B.* purchased another estate for 17,400*l.* Of the 8,440*l.*, 8,124*l.* was paid by *A. B.* in part payment for the second estate; the remainder was paid partly out of *A. B.*'s moneys, and partly by money raised by a mortgage of the estate. The estate was conveyed to

A. B. in fee. No acknowledgment or declaration of trust was ever made by *A. B.*, and he retained possession of the estate till thirty years after, when he became bankrupt. The Court, against *A. B.*'s assignees, presumed, under these circumstances, that the purchase had been made under the power for the benefit of the trust, and held that there had been no such adverse possession, and no such acquiescence on the part of the trustees, as to preclude the Court making a declaration that they had a lien on the estate to the extent of the trust moneys invested in its purchase. *Price* v. *Blakemore.* vol. 6, p. 507

5. A testator by his will founded a charity, towards which he directed certain and definite sums to be applied, and he devised estates to a company for that purpose. The will contained no express beneficial gift to the company. Held, however, under the circumstances, that the company was entitled to the increased rents of the property after making the fixed payments. *The Attorney-General* v. *The Grocers' Company.* vol. 6, p. 526

6. *A. B.* invested a sum of money, which was subject to the trusts of his marriage settlement, in the purchase of a real estate, and he added a sum of 500*l.* of his own. Held, under the circumstances, that he had devoted this sum to the trusts of the settlement for the benefit of the parties entitled thereunder. *Ouseley* v. *Anstruther.* vol. 10, p. 461

7. *A. B.*, after depositing in his own name in a savings bank to the full extent allowed, made further deposits to another account in the name of himself and sister, but nominally as trustee for her. By the terms of the act of parliament he retained a control over the fund. Held, that the sister was not entitled, the Court thinking that the object was to evade the act, and not to create a trust in favour of the sister. *Field* v. *Lonsdale.* vol. 13, p. 78

8. Trusts may be constituted not merely by direct declaration of trust, but also by the constructive operation of the consequences flowing from the acts of parties. Thus equity will enforce the execution of a trust, not only against the trustees themselves, but against all persons who obtain possession of the property affected by the trust, provided they had notice of it. *Pooley* v. *Budd.* vol. 14, p. 34

9. *A.*, who sold 500 tons of iron stacked, on his wharf to *B.*, in consideration of a bill accepted by a third party, gave an acknowledgment engaging to deliver it to the bearer, he (*A.*) "having been paid for the same." *B.* mortgaged the iron, and the bill having been dishonoured, *A.* refused to deliver the iron. The mortgagee proceeded in equity to make *A.* responsible for the iron. Held, that *A.* had no ownership or property in the iron so stacked, and was a trustee, and therefore a demurrer for want of equity was overruled. *Pooley* v. *Budd.* vol. 14, p. 34

10. A testator gave his leasehold to trustees for legatees in succession and upon trust, if the trustees "should think it proper or advantageous, as to those which were customarily or might be renewed," to endeavour to renew. And in order thereto, should, "if they in their discretion should think fit or expedient, but not necessarily or peremptorily," insure the lives of the *cestuis que vie* and apply the insurance money in renewing, and out of the rents and profits raise sufficient money to renew so often as a renewal should be advisable, and he gave a power to mortgage for the same purpose. Held, first, that this was an imperative trust, and that the trustees were bound to renew, if they could do so on reasonable terms; secondly, that if the trustees refused, the Court would exercise it; and thirdly, that they were bound to raise the necessary funds, in such a mode as would be most beneficial to all parties interested. *Mortimer* v. *Watts.* vol. 14, p. 616

11. A testatrix bequeathed funds standing in the name of *A.* (her trustee) to *B.*, *C.* and *D.* (her executors) upon certain trusts, and she directed *A.*, within six months after her death, to execute a deed, declaring that he, his executors, &c., would "thenceforth" stand and be possessed of the funds upon the trusts declared by her will. Held, that *A.* was a co-trustee of the funds under the will, and could not safely transfer them to *B.*, *C.* and *D.* without the sanction of the Court. *Iredell* v. *Iredell.* vol. 18, p. 202

12. Upon assenting to a specific bequest given to them in trust, executors forthwith become trustees. *Dix* v. *Burford.* vol. 19, p. 409

13. On the marriage of a lady, her brother and heir presumptive became a trustee of her real estate. He afterwards purported to convey it to new trustees, and he also executed a deed reciting that she was of age on her marriage. On her death, it turned out that, under a common mistake, she was an infant at her marriage, and that her settlement was inoperative as to her real estate, which descended on the brother as her heir. Held, that the brother was not bound, by his acts, to give effect to the settlement. *Campbell* v. *Ingilby.* vol. 21, p. 567

14. *A.* purchased shares in a joint-stock bank, and had them transferred into the joint names of herself and *B.* By the rules of the bank, there was to be no benefit of survivorship between shareholders. *B.* survived *A.*, and there being clear evidence that *A.* intended *B.* to take

beneficially and not as trustee, the Court held that the legal title was complete in *B.*, and that she was entitled to the shares by survivorship. *Garrick* v. *Taylor*. vol. 29, p. 79

15. Trustee *de facto*, held liable to account as a trustee *de jure*. *Hennessey* v. *Bray*. vol. 33, p. 96

TRUST (DEVOLUTION).

1. Devise by testator "of all the lands and hereditaments vested in him as trustee or mortgagee in fee," held to pass trust estates vested in the testator, but not in fee. *Greenwood* v. *Wakeford*. vol. 1, p. 576

2. A testator devised real and personal estate, on certain trusts, which, as the Court considered, the testator intended to be performed by his trustees named, and the survivors and survivor, and by the heirs and assigns, or by the executors or administrators, of the survivor. The will contained no power to appoint new trustees. The surviving trustee devised and bequeathed the trust estates and powers to *A.*, *B.* and *C.*, upon the trusts of the first will. Held, that this devise and the appointment of *A.*, *B.* and *C.* as trustees, were valid. *Titley* v. *Wolstenholme*. vol. 7, p. 425

3. Where a trust estate is limited to several trustees, and the survivors and survivor of them, and the heirs of the survivor of them, the surviving trustee does not commit a breach of trust by not permitting the trust estate to descend, or by devising it to proper persons, on the trusts to which it was subject in the hands of the surviving trustee. *Semble*. *Ibid*.

4. The 1 *Will.* 4, c. 47, s. 12, does not apply to a case where an estate is devised to a trustee during the life of a *cestui que trust*, with remainders over; and by the disclaimer of the trustee, the legal estate descends on the heir. *Heming* v. *Archer*. vol. 7, p. 515

5. Demurrer to a bill filed by the representatives of a trustee Defendant, who had died after decree, and whose interest had survived to a Co-Defendant, allowed with costs. *Buchanan* v. *Malins*. vol. 11, p. 52

6. Where one of several trustees dies pending a suit which does not seek to charge them personally in that character, his representatives are not necessary parties; for the trusteeship survives. *The London Gaslight Company* v. *Spottiswoode*. vol. 14, p. 264

7. A testator gave a power of sale to two trustees and the survivor, "his heirs, executors and administrators." Held, that a title dependent on a sale by the devisee in trust of the survivor, was too doubtful to force on a purchaser; and held, secondly, that the defect was cured, by the release of all the *cestuis que trust* to the representatives of the surviving trustee. *Macdonald* v. *Walker*. vol. 14, p. 556

8. Where a naked power is given to several, it cannot be exercised by the survivors; but if a power be annexed to an office, any persons filling the office may execute it. Power "to my executors hereinafter mentioned, with the approbation of my trustees for the time being," to sell real estate, held by the Master of the Rolls, upon the context, not to authorize a sale by the survivor of the executors, but the Lords Justices dissented from this decision. *Brassey* v. *Chalmers*. vol. 16, p. 231

9. A trustee devised "all his real estates, whatsoever and wheresoever," charged with a legacy. Held, that the trust estates did not pass. *Hope* v. *Liddell*. (No. 1.) vol. 21, p. 183

10. A testator devised a freehold house to trustees on certain trusts, and said, in effect, "I hereby declare and direct" that, during the minority of the *cestuis que trust*, the estate "shall and may" be devised by the trustees (naming them) and the survivor and his executors and administrators at rack-rent for twenty-one years. The trustees disclaimed, and a proper lease was granted by the heir-at-law, on whom the estate had descended. The Master of the Rolls held, that the lease was valid, but the Lord Chancellor held the contrary. *Robson* v. *Flight*. vol. 34, p. 110

TRUST (DURATION OF).

[*See* ESTATE IN FEE, LIFE ESTATE, TRUSTEES' ESTATE.]

1. Where parties call on trustees to part with their estate on the ground that their trusts have terminated, they are bound clearly and satisfactorily to shew the fact to the trustees. *Holford* v. *Phipps*. vol. 3, p. 434

2. Bequest of Consols to *A. B.*, a *feme covert*, to be transferred to her in her own name, and the interest to be for her separate use, the principal to remain in trust of the executors till the youngest of her children attained twenty-one, when the principal was to be her own; or in case of her demise it was to devolve to her husband. The trustees, on the death of the testatrix, transferred the fund to *A. B.*, and she and her husband afterwards sold it out, and they both signed the transfer. Held, that a breach of trust had been committed, though *A. B.* had made a valid disposition to the transferee. *Crosby* v. *Church*. vol. 3, p. 485

3. Devise to trustees and their heirs—Held to confer an estate co-extensive only with

the trusts they had to perform. *Ward* v. *Burbury*. vol. 18, 190

4. Devise of freeholds to trustees "and their heirs," upon trust to receive the rents and pay them to *E. W.* (*feme covert*) for her separate use; and after her death, upon trust to sell and divide amongst her children, and, in default, to apply the rents towards the education of *J. W.*, until he attain twenty-one; and (continued the testator) "when *J. W.* shall so have attained that age," I devise to him and his heirs all my real and personal estate. Held, on the death of *E. W.* without issue, that *J. W.* took the legal estate in fee. *Ibid.*

5. Estate, limited by deed, to trustees and their heirs, to preserve, &c., construed an estate *pur autre vie*, to effect the general intention of the deed. *Beaumont* v. *The Marquis of Salisbury*. vol. 19, p. 198

6. An estate was limited to trustees "*and their heirs*," to preserve contingent remainders, and it was subsequently, and after another life estate, limited to the same trustees for 500 years to raise portions. It was held, having regard to the clear intention, that the estate to the trustees "and their heirs" must be controlled, and that they took an estate *pur autre vie*, so as to give effect to the term of 500 years. *Ibid.*

7. Devise to trustees and their heirs to preserve contingent remainders. Held, to pass an estate during the life of the tenant for life only, and not in fee. *Haddelsey* v. *Adams*. vol. 22, p. 266

8. Duration of power to sell or mortgage. *Wolley* v. *Jenkins*. vol. 23, p. 53 (*Taite* v *Swinstead*. vol. 26, p. 525)

9. A testator devised real estate to trustees and their heirs in trust, during the life of his brother and until payment of his debts and legacies, to apply the rents in payment of such debts and legacies, and then to pay them to his brother for life, and, after the decease of his brother and such payment, he devised the estate to the heirs of the body of his brother, and in default to his own right heirs. The Court held, first, that the trustees took the legal fee, determinable upon the death of the brother and payment of the debts and legacies; secondly, that the brother took an equitable estate for life, with a legal remainder to the heirs of his body; and the trustees having conveyed to the brother the legal estate for his life, and he having suffered a recovery, the Court held, thirdly, that the heirs of the body were not barred, because the legal estate to the brother for life and the legal remainder to the heirs of his body had become vested by different instruments, and also because it was the duty of the trustees to preserve the contingent estates, and that it was therefore a breach of trust in them to convey the legal estate to the brother. But held, on appeal, that the title under the recovery was too doubtful to force on a purchaser. *Collier* v. *M'Bean*. vol. 34, p. 426

TRUSTEE ACT.

[*See* TRUSTEES (NUMBER OF).]

1. A testatrix directed funds to be transferred in the bank books into the names of *A. B.* and wife, and their children who were infants, for the benefit of *A. B.* and wife for life, with remainder to their children; this was done, and a suit being instituted for the performance of the trusts: Held, that the Court had no jurisdiction under the 1 *Will.* 4, c. 60, to order the infants to transfer the fund into court. *Watts* v. *Scrivens*. vol. 1, p. 223

2. One of two executors appearing, from proceedings in the cause, to be a trustee within the meaning of the 1 *Will.* 4, c. 60, of a fund standing in the testator's name, and it being proved by affidavit that he was living out of the jurisdiction, the Court, without a reference to the Master, made an order under this act for the transfer of the fund by his co-executor. *Parker* v. *Burney*. vol. 1, p. 492

3. An estate was devised to *A.*, subject to a charge of 5,000*l.* payable to the executors. In a suit to which *A.* was a party the estate was sold, and all proper parties were ordered to join in the conveyance. *A.* refusing to execute the deed, was declared a trustee for the purchaser, under the 1 *Will.* 4, c. 60, and another person was directed to convey in his stead. *Robinson* v. *Wood*. vol. 5, p. 246

4. The petition for the above purpose was presented by a Defendant in his character of purchaser, the Court refused to give costs. *Ibid.*

5. The executor of a surviving trustee declined stating whether he would or not prove the will, and neglected for thirty-one days after notice to transfer trust stock standing in the name of his testator. Held, that he was a trustee within the 1 *Will.* 4, c. 60, and a transfer was ordered to new trustees. *Cockell* v. *Pugh*. vol. 6, p. 293

6. The Court, if perfectly satisfied, will make an order to transfer under the Trustee Act without a reference. *Ibid.*

7. Devise in 1677 to the use of the poor of the parish of *A.* The Master was unable to ascertain in whom the estate was vested. Held, that the case was not within the trustee acts. *The Attorney-General* v. *Randles*. vol. 8, p. 185

8. So also where charity money had, in 1743, been laid out by a parish in the purchase of an estate for the poor of the

parish, and it could not be ascertained in whom it was vested. *The Attorney-General* v. *Randles.* vol. 8, p. 185

9. A conveyance by an infant, under the 11th sect. 1 *Will.* 4, c. 47, passed only such interest as the infant, if of full age, might pass. *Heming* v. *Archer.* vol. 8, p. 294

10. (1 *Will.* 4, c. 60.) Under the 1 *Will.* 4, c. 60, the Master has no power to appoint a person to convey. It is for the Master to "approve," and for the Court to "appoint." *Fowler* v. *Ward.* vol. 8, p. 488

11. (1 *Will.* 4, c. 60.) An infant devisee had been ordered to convey real estate sold for payment of the testator's debts. He made default, and was not amenable to process. The Court, under 1 *Will.* 4, c. 60, s. 8, directed a person to convey in his place. *Thomas* v. *Gwynne; Thomas* v. *Thomas.* vol. 9, p. 275

12. A copyhold was vested in a married woman. It was sold under a decree, which ordered all proper parties to join. She stated in writing that she never would surrender. Held, that the case came within the Trustee Act, and a vesting order was made. *Rowley* v. *Adams.* vol. 14, p. 130

13. Whether, where a purchaser has paid his purchase-money into Court, the petition under the Trustee Act should be presented by the Plaintiff or the purchaser, *quære.* But held, that the objection might be removed by making them co-petitioners. *Ibid.*

14. The tender of a notice requiring a trustee to surrender a copyhold is not sufficient, within the 17th section of the Trustee Act; but the tender of a deed appointing an attorney to surrender may possibly be sufficient. *Ibid.*

15. Where an estate is sold in lots under a decree, one petition under the Trustee Act, as to the several lots, is not multifarious. *Ibid.*

16. 13 & 14 *Vict.* c. 60. After a decree for the sale of an intestate's copyhold estate in lots, but before the sale, the infant heir of the intestate was admitted. Held, that a petition for a vesting order was properly presented by the purchaser, whose money was in Court, and that the costs of the order were to be borne by the vendors, and to be paid out of the purchase-money of the particular lot, and not out of the fund in Court generally. *Ayles* v. *Cox, Ex parte John Attwood.* vol. 17, p. 584

17. It is not necessary for the lord of the manor to appear in Court to consent to a vesting order under the Trustee Act (13 & 14 *Vict.* c. 60, s. 28). *Ibid.*

18. On a petition to appoint new trustees, under the Trustee Act, all the *cestuis que trust* and the old trustees were required to appear. *Re Sloper.* vol. 18, p. 596

19. The Court has no jurisdiction to award costs adversely, against third parties cited to appear as Respondents, upon a petition to appoint new trustees under the Trustee Act, 1850. *In re Primrose.* vol. 23, p. 599

20. The Court directed the circumstances bringing a case within the Trustee Act to be inserted in an order vesting the right to transfer stock. *Re Ellis's Settlement.* vol. 24, p. 426

21. The 22nd section of "The Trustee Act, 1850," applies to future as well as past dividends. *Re Peyton's Settlement.* vol. 25, p. 317

22. Bank stock was standing in the names of four trustees, one of whom was abroad and unaccessible. There being some inconvenience in removing him, the Court, under the Trustee Act, vested the right to receive the past and future dividends in the three other trustees during their joint lives. *Ibid.*

23. The sole trustee of money for *A.* and *B.* invested it in stock, in the joint names of himself and *B.* (an infant). After the deaths of the trustee and *A.*, the infant was held to be a trustee within the Trustee Acts, and a vesting order was made. *Sanders* v. *Homer.* vol. 25, p. 467

24. When an order is made under the Trustee Act, to be acted on by the Bank of England, the order should shew that the case comes within the act. *In re Mainwaring.* vol. 26, p. 172

25. Upon a petition to appoint new trustees of a separation deed, on the death of the sole trustee, it was objected, that the deed was void, in consequence of the father's thereby abandoning his right to the custody of his children. The Court declined on this occasion deciding as to its validity, but appointed new trustees to protect the property. *Re Matthews.* vol. 26, p. 463

26. By a foreclosure decree on an equitable mortgage, the mortgagor was declared a trustee, and an order was made vesting the estate in the mortgagee. *Lechmere* v. *Clamp.* vol. 30, p. 218

27. By an order made under the Trustee Act real estate was inadvertently vested in an alien. The Court declined varying the order, by inserting the name of a natural-born subject, without the consent of the Crown; but the order was made upon a re-hearing. *Re Giraud.* vol. 32, p. 385

TRUSTEE (COMPENSATION TO).

[*See* TRUSTEE (PROFITING BY TRUST).]

TRUSTEE (DISCRETION).

1. A testator directed his trustees to invest his personal estate in lands in *England* or *Scotland*, the limitations of which were

to be different. Held, that this was a discretion of such a nature, that this Court could not execute it. *Fordyce* v. *Bridges*. vol. 10, p. 90

2. By marriage articles, a wife was authorized to divert the trust funds for the benefit of herself or children, provided the diversion be acceded to by the trustees. Held, that the trustees had a discretion to consent or not, that it must be *bonâ fide* exercised, and to justify their assent, the purpose for which the money was to be applied must, in their judgment, appear to be really for the benefit of the wife or children. *Byam* v. *Byam*. vol. 19, p. 58
3. The discretion of directors to forfeit shares for nonpayment of calls is a trust to be exercised for the benefit of all the shareholders. *Harris* v. *The North Devon Railway Company*. vol. 20, p. 384
4. A testator empowered his widow, if his children should conduct themselves to her satisfaction up to the age of twenty-five, and marry with her approbation, but not otherwise, to give them 1,000*l.* each for the purpose of setting out in the world. Held, that she had a discretionary power which she might exercise after a child attained twenty-five, though unmarried. *Davidson* v. *Rook*. vol. 22, p. 206
5. A testator, whose wife was of unsound mind, gave his estate to trustees, in trust, "to apply from time to time, at their uncontrolled discretion, such annual sum," for the maintenance, &c. of his wife, as, together with her own income, "shall not exceed 500*l.* per annum." Held, that the discretion referred to the application and not to the amount, and that the widow, who had recovered, was entitled to have her income made up to 500*l.* a year out of the testator's estate. *Bullock* v. *Bullock*. vol. 34, p. 85

TRUSTEE (LIABILITY).

[*See* Co-Trustees' Liability.]

1. Three executors and trustees (*A.*, *B.* and *C.*) were authorized to carry on the testator's farm. *A.* (with the concurrence of *B.* and *C.*) managed the whole affairs relating thereto. Held, that in taking the accounts between *B.* and *C.*, *A.* was to be considered their agent. *Toplis* v. *Hurrell*. vol. 19, p. 423
2. Trustees who paid over the trust fund to wrong persons, trusting to a marriage certificate which turned out to be a forgery, made responsible for so much of the trust fund as could not be recovered from those who had wrongfully received it. The father of the recipients, who had sent the forged certificate of his marriage to the trustees, was also made responsible for the money. *Eaves* v. *Hickson*. vol. 30, p. 136

TRUSTEE PROFITING BY TRUST.

1. Executors held, under the circumstances, justified in appointing an agent to get in the testator's debts, and in allowing him a salary for his trouble. *Hopkinson* v. *Roe*. vol. 1, p. 183
2. A testator devised and bequeathed his freehold and leasehold estate to trustees for sale, and he "declared that his trustees respectively should be entitled to have and receive, out of the trust moneys, all costs, charges and expenses, fees to counsel and for advice, and for professional assistance, and loss of time, paid, incurred, sustained or occasioned in or about the execution of the said trusts or in anywise relating thereto." One of the trustees was a land-surveyor, and he superintended the management and sale of the estates. Held, that he was entitled to a compensation for loss of time. *Willis* v. *Kibble*. vol. 1, p. 559
3. Business relating to a trust estate was transacted by two solicitors in partnership, one of whom was a trustee of the estate. Held, in passing his accounts, that costs out of pocket could alone be allowed. *Collins* v. *Carey*. vol. 2, p. 128
4. A testator, a victualler, directed his trade to be carried on by his executors, a brewer, and spirit merchant, who had been in the habit of serving him in his lifetime, and supplies were furnished for that purpose by them. The Court would not declare that the executors were entitled to receive the cost price only for these supplies; but directed an inquiry whether the supplies were proper, and furnished at the ordinary market price. *Smith* v. *Langford*. vol. 2, p. 362
5. An act of parliament empowered a rector, with the consent of the bishop who was patron of the living, to raise money by annuity for building a new rectory house, the plan and the accounts of which were to be approved of by the bishop. The bishop advanced the necessary money, and obtained a grant of an annuity, charged on the living. Held, though there was no unfairness, that the transaction, on principle, could not stand. *Greenlaw* v. *King*. vol. 3, p. 49
6. A solicitor who is a trustee, is not entitled to charge for his professional services, which must be assumed to have been rendered in his character of trustee; but, under a contract properly entered into, he may be entitled to his professional charges. *In re Sherwood*. vol. 3, p. 338
7. A surviving partner being the executor of his deceased partner, is not entitled

to an allowance for carrying on the business after his partner's decease, for the benefit of the estate; nor is an executor and legatee of such surviving partner. *Stocken* v. *Dawson.* vol. 6, p. 371

8. A trustee acting as solicitor in the trust matters, is merely entitled to costs out of pocket; the rule is not inflexible, and compensation may, in special cases, be made him under the authority of the Court by a fixed allowance, but not by allowing him to make the usual professional charges. *Bainbrigge* v. *Blair.* vol. 8, p. 588

9. A testator gave power to his trustees, to become lessees of the trust property. One of them availed himself of it, and the other trustee did not actively interfere in the management of the trust. The trustee-lessee was removed by the Master of the Rolls, at the instance of the *cestuis que trust* on the ground of the inconsistency of his duties of lessee and trustee, and upon appeal on that and other grounds. *Passingham* v. *Sherborn.* vol. 9, p. 424

10. Trustees can only be allowed costs out of pocket for professional business transacted by a firm, one of whom is a trustee, though the business be done by one of the partners who is not a trustee. *Christophers* v. *White.* vol. 10, p. 523

11. An executor and trustee who acted as auctioneer in the sale of the trust property held not entitled to charge commission. *Kirkman* v. *Booth.* vol. 11, p. 273

12. A general meeting of a railway company placed 12,050*l.* shares in a projected extension line at the disposal of the directors. Held, that the disposal was merely as trustees for the company, and not for their own benefit; and *Hudson*, who was the chairman (and exercised uncontrolled authority in the conduct of the concerns of the company), having sold a considerable part of such shares at a premium, was held liable to account to the company for their produce, with interest at 5*l.* per cent. Held, also, that he could not retain the profits, either as a large landowner on the line, or as a remuneration for his great services, or on the ground of the acquiescence of the shareholders, to be inferred from a presumed knowledge of the share-book. *York and North Midland Railway Company* v. *Hudson.* vol. 16, p. 485

13. The chairman of a railway company allotted a number of the unappropriated shares to his nominees; they were sold at a premium, and the produce received by him. Held, that as trustee, he was bound to the company for the profit made. *Ibid.*

14. The chairman of a railway company appropriated various unallotted shares to the use of various persons, whose names he did not mention, in order to secure or reward services which he declined to state, but which it was insinuated was in the nature of "secret service money." Held, that if the Defendant had applied the property of the company in a manner which would not bear the light, he must suffer the consequences; and that being charged with the receipt of the money, he could not discharge himself by the suggestion of such an application. *Ibid.*

15. One of several partners was employed to purchase goods for the firm. He, unknown to his copartners, purchased goods of his own, at the market price, but he made a considerable profit thereby. Held, that the transaction could not be sustained, and that he was accountable to the firm for the profit thus made. *Bentley* v. *Craven.* vol. 18, p. 75

16. A testatrix devised real estate to her trustee and his heirs, in trust out of the rents to maintain her son *William* until he attained twenty-one, "and when and so soon as he should attain twenty-one the testatrix devised it to him in fee. But in case he should die before attaining twenty-one, to his children, if any, or if none, then to the Defendants. The son did attain twenty-one, and died without issue in the lifetime of the testatrix. There being no heir or next of kin of the testatrix: Held, that the trustee was entitled to hold the real estate beneficially. *Cox* v. *Parker.* vol. 22, p. 168

17. The testator appointed, as trustee and executor, a person who, for many years, had been the paid receiver and manager of his estate. The tenant for life being an infant, the Court continued the executor as receiver at a salary. *Newport* v. *Bury.* vol. 23, p. 30

18. Commissioners were authorized by act of parliament, to raise a sum of money for parish purposes, and to secure it by debenture or assignment of the rates. The commissioners gave a debenture for 1,000*l.* to *A. B.*, who was treasurer and also a commissioner. *A. B.* advanced nothing at the time, but he subsequently advanced the amount, and from that time only he received interest. By subsequent receipts of rates the balance was turned, and *A. B.* had funds in hand. Held, by Lord *St. Leonards* and the Master of the Rolls, that the transaction was not invalid, and that *A. B.* was entitled to charge full interest on his debenture until he had been formally paid off. *Fletcher* v *Gibbon.* vol. 23, p. 212

19. A solicitor was appointed executor, and was to be "at liberty to charge for his professional services." Held, that he was only entitled to charge for services strictly professional, and not for matters which an executor ought to have done without

the intervention of a solicitor, such as for attendances to pay premiums on policies, attending at the bank to make transfers, attendances on proctors, auctioneers, legatees and creditors. *Harbin* v. *Darby*. (No. 1.) vol. 28, p. 325

20. One of several co-owners of a ship, who acts as ship's husband, is only entitled to charge the cost price of supplies to the ship furnished by him in the course of his business. *Ritchie* v. *Couper*. vol. 28, p. 344

21. As to the right of a part owner or partner in ships, who acts as ship's husband, to charge the usual commission. *Semble*, that, in the absence of any agreement, express or implied, he is not entitled. In a case in which no express agreement appeared, and the books shewing the usual course of dealing were not produced at the hearing, an inquiry was directed. *Miller* v. *Mackay*. vol. 31, p. 77

22. One of the inspectors, under a creditors' deed, of a newspaper to be carried on under it by the debtor himself, furnished the paper. Held, that being in the position of a trustee, he could only charge the cost price. *Chaplin* v. *Young*. (No. 2.) vol. 33, p. 414

23. In 1834 *C. B.*, one of several *cestuis que trusts*, mortgaged his share for 10,500*l.* In 1842 the trustees bought up this mortgage for 1,200*l.* for the benefit of *C. B.*'s widow and family, but they were unable to find the purchase-money. Thereupon three other *cestuis que trusts* became the purchasers, and six years afterwards they became trustees. By an unexpected sale of the trust property in 1863, the whole mortgage money was paid. Upon a bill filed in 1864 by *C. B.*'s widow: Held, that she was entitled to no interest in this beneficial purchase. *Barwell* v. *Barwell*. vol. 34, p. 371

TRUSTEE (PURCHASING).

1. An hospital having a corporate character, was established in close connection with a municipal corporation. The ex-mayor was to be the governor, the masters and assistants were elected from the corporation, and the mayor and aldermen were visitors:—Held, that the corporation and hospital were, in equity, incapable of contracting, and a purchase by the corporation of property belonging to the hospital was set aside. *Attorney-General* v. *The Corporation of Plymouth*. vol. 9, p. 67

2. A secret purchase by an agent from his principal was set aside. By the decree possession was directed to be given, and a conveyance to be executed. Accounts were also directed to be taken of the rents and purchase-money, and the balance was directed to be paid, but no lien was given. Held, that the conveyance must at once be made, without waiting for the result of the accounts. *Trevelyan* v. *Charter*. vol. 9, p. 140

3. An heir buying up incumbrances on the descended estates is entitled, as against the creditors of the estate, to no more than he actually paid. *Lancaster* v. *Evors*. vol. 10, p. 154

4. *A.* devised an estate to his heir, who, in his own right, had a charge on it. The heir bought up an incumbrance on the estate amounting to 11,555*l.* for 2,000*l.* Held, that he was entitled to the full amount, as against the other incumbrancers on the estate. *Davis* v. *Barrett*. vol. 14, p. 542

5. A solicitor purchased a property from his client, who, by a codicil, confirmed the sale and devised the property to the solicitor. The Court having, on the evidence, held the sale invalid, also decided that the codicil was inoperative in equity. *Waters* v. *Thorn*. vol. 22, p. 547

6. Purchase by a solicitor from his client for 1,820*l.* upheld, though he had given about 100*l.* less than the value, and had two years afterwards sold part of the property at a fancy price, making a profit of 970*l.* *Spencer* v. *Topham*. vol. 22, p. 573

7. Distinction between a purchase by a trustee for sale and a purchase of a reversionary interest by a trustee from his *cestui que trust*. The former is absolutely void, and in the second case the burden of proof lies on the trustee to shew that every possible security and advantage were given to the *cestui que trust*, and that as much as possible was gained for him in the transaction, and as could have been obtained under any other circumstances. *Denton* v. *Donnor*. vol. 23, p. 285

8. An absolute conveyance of a reversionary interest to a solicitor reduced, by decree, to a mortgage, the solicitor standing in a *quasi* though not absolute relationship of trustee and solicitor, and failing to prove that the transaction was clearly understood, and that full value was given. *Ibid.*

9. Purchase by a trustee and executor from his *cestui que trust* of a portion of an unascertained residue set aside. *Smedley* v. *Varley*. vol. 23, p. 358

10. An executor purchased a share of the residue, and, in an administration suit, he was ordered to pay the assets into Court, *minus* the amount of the purchased share. Afterwards, in another suit, the purchase was set aside. Held, that the executor was not entitled, on setting aside the transaction, to a decree for repayment of the consideration money, but that it must be paid into Court in the administration suit. *Ibid.*

11. If a solicitor purchase from his client,

and institute a suit against third parties to enforce his right, the objection to the transaction, on the ground of its being a purchase by a solicitor from his client, cannot be maintained by such third parties. *Knight* v. *Bowyer*. vol. 23, p. 609

12. A mortgagor consulted a solicitor who turned her over to his clerk to assist her gratuitously. The clerk, by reason of information derived during such employment, bought up the mortgage for less than half the amount. Held, that he was a trustee of the benefit for the mortgagor. *Hobday* v. *Peters*. (No. 1.) vol. 28, p. 349

13. A trustee for sale bought the trust estate at an auction and died. Held, that his heir-at-law had no right, as against his next of kin, to have the contract completed for his benefit. *Ingle* v. *Richards*. (No. 1.) vol. 28, p. 361

14. A beneficial purchase by a solicitor from his client pending that relation cannot be supported; but the solicitor may insist on and obtain a mortgage from his client for whatever is justly due to him. *Pearson* v. *Benson*. vol. 28, p. 598

15. A fund was settled on husband and wife successively for life, with remainder to the husband absolutely. The husband became bankrupt, and the trustee purchased the husband's interest in the funds from the assignees, under an agreement between the trustee and the husband to divide the profit. The purchase-money was paid out of part of the trust funds. Held, on the death of the wife, that the trustee could claim no beneficial interest in the purchase, and that the fund belonged exclusively to the representatives of the husband. *Vaughton* v. *Noble*. vol. 30, p. 34

16. The rule of the Court is imperative, that, in the absence of any contract for that purpose, no person can, by acting as trustee, derive any pecuniary benefit to himself. *Crosskill* v. *Bower*; *Bower* v. *Turner*. vol. 32, p. 86

17. Three trustees, two of whom were bankers, were empowered to carry on a business and to borrow money "from any bankers or other persons" for that purpose. The bankers made advances of money to the trust at compound interest. Held, that having regard to their fiduciary character, they could make no profit, and were entitled to simple interest only on their advances. *Ibid.*

18. After an ineffectual attempt to sell by auction an estate devised in trust for sale, liberty was given to one of the trustees to purchase it at the price at which it had been bought in, upon its appearing beneficial to the parties interested. *Farmer* v. *Dean*. vol. 32, p. 327

19. A trustee for sale cannot purchase the trust property, but an ordinary trustee may purchase the trust property from his *cestuis que trusts*, though the burden of proving the propriety of the transaction lies on the trustee. *Luff* v. *Lord*. vol. 34, p. 220

20. In 1862 a trustee purchased from his *cestuis que trusts* for 450*l.* a legacy of 2,000*l.*, payable on the termination of a litigation, which had been pending many years. The litigation ended in 1863. The Court supported the sale, though the vendor was in distressed circumstances, on the following grounds:—The vendor well knew his position and employed his own solicitor, the proposals for the sale proceeded from the vendor, after unavailing attempts to sell elsewhere, the trustee was an unwilling purchaser, and the sale was only completed upon threats of the *cestui que trust* to file a bill for the specific performance, the assets, out of which the legacy was to be paid, were in litigation and doubt, so as to make the property unmarketable, and the legacy was subject to the right of the vendor's wife to a settlement and to her right by survivorship. *Ibid.*

21. A trustee, who buys up at an under price a charge on the trust property, may, if for a long lapse of years the *cestuis que trusts* refuse to adopt the purchase, keep it for himself. *Barwell* v. *Barwell*. vol. 34, p. 371

22. There is no rule of equity which prevents one of several residuary legatees buying the share of another, or purchasing for less than the amount a charge on the share of another. *Ibid.*

TRUSTEE RELIEF ACT.

1. Executors paid money into Court under the Trustee Indemnity Act, to an account headed, "In the matter of the trusts of the will of *S. J.*" The Court held that the account was too general to enable it to act under the statute. *In re Joseph's Will*. vol. 11, p. 625

2. Observations as to the effect of and the proper mode of proceeding under this act. *Ibid.*

3. Where an executor pays a legacy into Court, under the Trustee Indemnity Act (10 & 11 *Vict.* c. 96), his costs of paying it in are to be borne by the estate; but those of paying it out by the legatee. *In re Cawthorne*. vol. 12, p. 56

4. To enable the Court to distribute a fund under the Trustee Indemnity Act, it must stand to an account which separates it from the other assets, and disconnects it from all the other trusts of the will. *In re Everett*. vol. 12, p. 485

5. A fund was paid into Court under the

Trustee Indemnity Act. The tenant for life petitioned for payment of the dividends. There being no general estate applicable: Held, that the costs of the petition ought to be paid out of the income and not out of the *corpus*. *In re Lorimer*. vol. 12, p. 521

6. Where, under the Trustee Indemnity Act, money is paid into Court "upon the trusts of a will," it involves the general administration of the estate, and the Court will not order it to be transferred to a particular account, except at the request, and on the responsibility of the trustee. *Re Wright's Trusts*. vol. 15, p. 367

7. Trust moneys being paid into Court under the Trustee Relief Act. Held, that the costs of an application for payment of the income to the tenant for life ought to be paid out of the *corpus*. *In re Field's Trust*. vol. 16, p. 146

8. *A. B.* purchased an estate, subject to a pecuniary charge. Held, that he was not entitled to pay the amount of the charge into Court under the Trustee Relief Act. *In re Buckley's Trust*. vol. 17, p. 110

9. On a petition by tenant for life under the Trustee Relief Act, for payment of the income, her costs were ordered to be paid out of the income, and those of the *corpus*. *Re Hadland's Settlement*. vol. 23, p. 266

10. Costs of an application by tenant for life to obtain payment of the income of funds paid into Court under the Trustee Relief Act, held to be payable out of the income and not out of the *corpus*. *In re Hammersley's Settlement*. vol. 23, p. 267

11. The Trustee Act held to apply to a case in which the executor of a surviving trustee had not proved the will and had neglected to transfer stock on the requisition of new trustees appointed out of Court. *Re Ellis's Settlement*. vol. 24, p. 426

12. A trustee vexatiously paying trust money into Court under the Trustee Relief Act ordered to pay the costs of the Petitioner for obtaining payment. *In re Cater's Trust*. (No. 1.) vol. 25, p. 361

13. A trustee paid trust funds into Court, under the Trustee Relief Act, merely because other trustees to whom it was payable declined to give a release. He was ordered to pay the costs of getting the money out of Court. *In re Cater's Trust*. (No. 2.) vol. 25, p. 366

14. A trustee is not, in all cases, justified in paying a trust fund into Court under the Trustee Relief Act, and where he does so without sufficient reason, he will be made liable for the costs of a petition for getting the fund out of Court. *In re Knight's Trusts*. vol. 27, p. 45

15. The children of *A. B.* were entitled to a specific legacy under a will, and to a portion of a residue under a subsequent deed of compromise. *C. D.* was both the legal personal representative and the trustee of the deed. The legacy was paid to the two children on their attaining twenty-one, in 1839 and 1843, in a suit to which the trustee was a party; but the other fund remained unpaid and in the funds until 1858, when, the two sons being in the Austrian military service, the trustee paid the fund into Court under the Trustee Relief Act. Held, that he was not justified in so doing, under the circumstances, and he was ordered to pay the costs of a petition by the sons to obtain payment out of Court. *Ibid.*

16. Trustees, on paying a fund into Court, under the Trustee Relief Act, retained a sum for their costs. On a petition to obtain the fund out of Court, the trustees obtained the costs of their appearance, but all their costs were ordered to be taxed. *Re Hue's Trusts*. vol. 27, p. 337

17. Trustees, having *bonâ fide* doubts, are justified in paying funds into Court under the Trustee Relief Act (10 & 11 *Vict.* c. 96), and will receive their costs. The Court considering it important not to make the rule too stringent as to their costs in such cases. *Re Wylly's Trusts*. vol. 28, p. 458

18. Trustees paid the ascertained share of a residue of a married woman into Court under the Trustee Relief Act. The Court refused to make the trustees pay the costs, observing that it was not desirable to act too strictly in such cases. *Re Brocklesby*. vol. 29, p. 652

19. The Court will not, under the 22 & 23 *Vict.* c. 35, s. 30, give its opinion for the guidance of trustees on the effect of a limitation contained in an instrument. *Re Mary Hooper*. vol. 29, p. 656

20. A trustee filed a bill in a case in which he ought to have paid the fund into Court under the Trustee Relief Act. He was allowed only such costs as he would have been entitled to under the Trustee Relief Act. *Wells* v. *Malbon*. vol. 31, p. 48

21. Trustees who had, without sufficient reason, paid a trust fund into Court, under the Trustee Relief Act, were ordered to pay the costs of a petition for its payment to the party entitled. *Foligno's Mortgage*. vol. 32, p. 131

22. *A.* and *B.*, being each entitled to one-fifth of a reversionary fund, mortgaged their shares with a power of sale. *B.* was a mere surety for *A.*, and *A.* afterwards assigned his share to *B.* for his indemnity, with a power to sell and to give receipts for the share and the produce of the sale. The mortgagees sold the reversionary interest, and refused to pay the surplus to *B.* without the concurrence and release of *A.*, and they paid the fund into Court under the Trustee Relief Act.

Held, that this was improper, and they were ordered to pay the costs of a petition to get the money out of Court. *Foligno's Mortgage.* vol. 32, p. 131

23. Costs of a petition by a tenant for life, to obtain the income of a fund, paid into Court under the Trustee Relief Act, ordered to be paid out of the *corpus*. *Re Leake's Trusts.* vol. 32, p. 135
24. Trustees who, after accepting the trust, had paid the trust fund into Court without sufficient reason, refused their costs of an application to pay the income to the tenant for life. *Ibid.*
25. A fund was held in trust for *A.*, an unmarried lady, for life, but to cease if "by any means whatever" it should vest or become payable to any other person. *A.* afterwards married, and her life interest was settled to her separate use, without power of anticipation, by a settlement to which the trustees purported to be parties, but to which they never assented. The trustees thereupon paid the trust fund into Court under the Trustee Relief Act. Held, that as the trusts which they had accepted had not been varied either by the marriage or the settlement, they were not justified in paying the money into Court, and they were refused their costs of appearing on a petition for payment of the income to the tenant for life. *Ibid.*
26. A mere stakeholder may pay a fund into Court under the Trustee Relief Act (10 & 11 *Vict.* c. 96). *United Kingdom Life Assurance Company.* vol. 34, p. 493
27. An insurance company paid the amount of a policy, the right to which was disputed, into Court under the Trustee Relief Act. Held, that they were entitled to their costs from the persons wrongfully claiming the fund. *Ibid.*

TRUSTEES' COSTS.

[*See* COSTS OF ADMINISTRATION.]

1. A trustee guilty of a breach of trust, allowed the general costs of an administration suit as between solicitor and client, but was ordered to pay so much as had been occasioned by his breach of trust. *Pride* v. *Fooks.* vol. 2, p. 430
2. Trustee of a voluntary settlement was made a party to a bill to set it aside. The decree setting it aside was made without costs as against the trustee. *Townsend* v. *Westacott.* vol. 4, p. 58
3. Where charity trustees have, from accident and without wilful default, committed an error which they take the first opportunity to correct, the Court does not make them pay costs, though a decree is made against them; but the rule does not apply where they set up their interests adversely in the suit. *Attorney-General* v. *Drapers' Company.* vol. 4, p. 67
4. Where trustees of a charity and their predecessors have, for a long course of years, administered the funds erroneously, but being called upon duly to administer them, they insist on their own rights adversely and fail, they must pay the costs, notwithstanding the contrary usage of their predecessors. *Attorney-General* v. *Christ's Hospital.* vol. 4, p. 73
5. Trustees who unsuccessfully resisted the claim of the assignee from the *cestui que trust*, to have a term merged: Held entitled to trustees' costs. *Holford* v. *Phipps.* vol. 4, p. 475
6. Trustees neglecting their trust not entitled to their costs. *England* v. *Downs.* vol. 6, p. 279
7. Costs refused to one of two trustees who had declined to transfer a fund to the party entitled, and had severed in his defence. *Allen* v. *Thorp.* vol. 7, p. 72
8. Heir-at-law being also the devisee in trust, misconducting his defence, ordered to pay all the costs of the suit. *Man* v. *Ricketts.* vol. 7, p. 93
9. A trustee was declared liable for a breach of trust, and was ordered to pay the costs up to the hearing. He complied with the decree. Held, that he was entitled to his costs of the subsequent proceedings for clearing and distributing the fund. *Hewett* v. *Foster.* vol. 7, p. 348
10. A party named trustee without his sanction, and called on to disclaim, is authorized in taking the opinion of counsel as to his obligation to execute a disclaimer. *In re Tryon.* vol. 7, p. 496
11. The representative of a defaulting executor, fairly accounting, is entitled to deduct his costs of suit out of the assets, though they may be insufficient to repair the breach of trust. *Haldenby* v. *Spofforth.* vol. 9, p. 195
12. A bill contained allegations of great fraud against trustees which all failed. The trustees were removed, but not, however, on the ground of misconduct. Held that they were entitled to the costs of the whole suit. *Passingham* v. *Sherborn.* vol. 9, p. 424
13. Generally where trustees are guilty of a breach of trust, they must pay the costs of a suit to repair it. *Byrne* v. *Norcott.* vol. 13, p. 336
14. Trustees had lent money on a technically insufficient security. In the Master's office, they entered into evidence to prove its sufficiency, but failed; and they afterwards presented a petition for calling in and investing the money. This was done, and no loss occurred. Held, that the trustees were entitled to their costs of both proceedings. *Royds* v. *Royds.* vol. 14, p. 54

15. Considering the importance of securing intelligent, competent, and responsible persons to act as trustees, it is not the practice of the Court to visit trustees with costs, except where they act from interested motives, or intentionally and wantonly conduct themselves in a vexatious and oppressive manner. *Noble* v. *Meymott.* vol. 14, p. 471

16. Pending a suit to displace *A. B.* (a trustee) for misconduct, he under a power appointed *C. D.*, a new trustee. *C. D.* had notice that the *cestuis que trust* complained of irregularities in the trusts, and that *A. B.* was about to leave the country for a long while. At the hearing, *A. B.* and *C. D.* (he not objecting) were discharged from the suit. Held, that *C. D.* was entitled to no costs. *Peatfield* v. *Benn.* vol. 17, p. 522

17. Trustees of a charity, who had greatly exceeded the estimate authorized by the Court for erecting a school, were disallowed the costs of an inquiry whether it was for the benefit of the charity. *Attorney-General* v. *Armitstead.* vol. 19, p. 584

18. The co-trustee who had joined as Co-Plaintiff refused his costs. *Hughes* v. *Key.* vol. 20, p. 395

19. A trustee in two independent matters for the same person, is not justified in mixing up the two transactions, and refusing to pay over the first trust fund until all questions as to the second have been settled. *Hughes* v. *Key.* vol. 21, p. 508

20. Property was settled to the separate and inalienable use of a married woman for life, and the trustees were authorized, out of the moneys which should come to their hands, to reimburse themselves all expenses to be incurred in or about the execution of the trusts or any matter relating to the settlement. A bill filed by her next friend, complaining of a breach of trust, and to remove the trustees, was dismissed with costs, but, by consent, new trustees were to he appointed, and a receiver to get in the income. Before new trustees had been appointed and the costs paid by the next friend, he became insolvent. Held, that the income in the hands of the receiver was applicable to the payment of the trustees' costs. *D'Oechsner* v. *Scott.* vol. 24, p. 239

21. On setting aside a voluntary settlement, made by a trader while insolvent, in favour of his wife and an infant child, the Court, as to the costs of the trustees and infant, Held, that the utmost it could do was to make the decree without costs. *Elsey* v. *Cox.* vol. 26, p. 95

22. Trustee disallowed the costs of an improper answer. *Eddowes* v. *Eddowes.* vol. 30, p. 603

23. An executor and trustee, who had acted but not proved, refused, and insisted that he was not bound, to account, and he placed every impediment in the Plaintiff's way. Having failed in his contention, the Court, on making a decree for an account, directed him to pay the costs of suit to the hearing. *Boynton* v. *Richardson.* vol. 31, p. 340

24. The Defendant was one of two trustees for sale of an estate, the produce of which was divisible amongst persons *sui juris.* He refused to concur in a sale agreed upon by his *cestuis que trust*, until he had been furnished with deeds, &c., relating to another and an independent trust, and to which the Court held he was not entitled. He also refused to retire from the trusts to facilitate the sale. Upon a bill by the other trustees and the persons beneficially interested, he was removed from the trusts and ordered to pay the costs of the suit. *Palairet* v. *Carew.* vol. 32, p. 564

25. A trustee of a fund belonging to a deceased person refused to pay it over to his legal personal representative, on the ground that there was a question, under the will of the deceased, whether it was not specifically bequeathed, and requiring the assent of the alleged specific legatees. He was ordered to pay it to the legal personal representative, together with the costs of suit, to which suit, it was held that such specific legatees were not necessary parties. *Smith* v. *Bolden.* vol. 33, p. 262

26. Trustees under a creditors' deed, in the Form D. of the Bankrupt Act, realized the assets, but the deed afterwards proved invalid (the requisite number of creditors not having assented to it) and the debtor was made bankrupt. Held, that the trustees were not entitled to their costs and expenses of administering the estate, the deed under which they acted being totally void. *Smith* v. *Dresser.* vol. 35, p. 378

TRUSTEES' DISCHARGE.

1. Trustees are not entitled, as against the trust estate, capriciously to refuse to continue; but if they find the trust estate involved in complicated questions not in contemplation when they undertook the trust, they have a right to come to this Court for relief. *Greenwood* v. *Wakeford.* vol. 1, p. 576

2. A trustee cannot, from mere caprice, retire from the performance of his trust, without paying the costs occasioned. But circumstances arising in the administration of a trust which have altered the nature of his duties, justify him in leaving it and entitle him to his costs. *Forshaw* v. *Higginson.* vol. 20, p. 485

3. A trustee was desirous of retiring, and was justified in so doing, though from private circumstances; his *cestuis que trust* having prevented his retiring, he instituted a suit to administer the trusts. He was allowed his costs. *Forshaw* v. *Higginson.* vol. 20, p. 485
4. A trustee desirous of retiring, by reason of his want of confidence in his co-trustee, cannot safely effect his object by getting such co-trustee to appoint a new trustee in his place under a power vested in him for that purpose. *Ibid.*
5. A trustee unreasonably resisting the claims of his *cestui que trust* ordered to pay the costs of the suit. *Price* v. *Loaden.* vol. 20, p. 508
6. A trustee held justified, under the circumstances, in retiring from the trust, and to be entitled to his costs of suit to have a new trustee appointed. *Gardiner* v. *Downes.* vol. 22, p. 395

TRUSTEES' ESTATE.

[*See* TRUST (DURATION).]

A copyhold was devised to trustees for certain persons, who, after the testatrix's death, sold it, and the purchaser was admitted on the surrender of the customary heir. Held, that although the purchaser had thus obtained both the legal and equitable title, still, to make a good title, there must be a release from the trustees of their bare right to be admitted. *Steele* v. *Waller.* vol. 28, p. 466

TRUSTEES (NUMBER).

[*See* NEW TRUSTEE.]

1. A testator appointed two trustees, and gave them power of making advancements to his children; and he directed if either declined to act, a new trustee should be appointed. One alone (the mother of the children) acted, and made, as was alleged, advancements without the concurrence of the other trustee, or the appointment of a new trustee. Held, that the proper discretion had not been exercised, and that no inquiries could be directed as to the alleged advancements with a view to their being allowed. *Palmer* v. *Wakefield.* vol. 3, p. 227
2. Shares, which, by the rules of a company, could only be held in the name of a single person, were bequeathed specifically to three trustees for *A.* for life, with remainder over. Held, that they might lawfully be held in the name of a single trustee. *Consterdine* v. *Consterdine.* vol. 31, p. 330

TRUSTEES' RECEIPTS.

1. An obligor of a bond, after notice that it had been assigned on trusts, of the particulars of which there was no proof of his being cognizant, made payments to parties not entitled thereto, some by order of the trustee, and some to the executrix of the obligee, without such order: Held, that the obligor was not responsible to the *cestui que trust* for the former, but was liable to repay the latter. *Roberts* v. *Lloyd.* vol. 2, p. 376
2. Freehold and leasehold estate was devised to *A.*, subject to the payment of debts and annuities. *A.* sold the real estate. The purchaser insisting that the annuitants ought to concur, filed a bill against the vendor for a specific performance. The vendor's answer admitted the sufficiency of the personal estate to pay the debts:—that they had all been paid since the contract, and that the sale had not been made for the specific purpose of satisfying the debts. Held, that these circumstances did not vary the rule as to the liability of the purchaser to see to the application of the purchase-money, and that he was bound to complete. *Page* v. *Adam.* vol. 4, p. 269
3. A testator ordered his debts to be paid by his executors, and, after giving legacies, he gave the residue of his real and personal estate, subject as aforesaid, to *A.*, and he appointed *A.* and *B.* executors. Held, that if the legacies were charged on the real estate the debts must also be charged thereon, and that therefore *A.* was able to give valid receipts for the purchase-money of the real estate, which relieved a purchaser from the necessity of seeing to its application. *Dowling* v. *Hudson.* vol. 17, p. 248
4. Under a trust to pay a specified debt of the testator and debts generally, a purchaser of the estate is not bound to see the specified debt paid. *Robinson* v. *Lowater.* vol. 17, p. 592
5. When there is a charge of debts generally, or of legacies and debts generally, a purchaser is not bound to see to the application of the purchase-money, but *secus* when the trust is to pay schedule debts or legacies simply. *Ibid.*
6. A testatrix gave the residue of her real and personal estate, subject to the payment of her debts and legacies, to or in trust for *D.* absolutely, and she appointed *D.* and *R.* executors of her will. *D.* died, and *R.*, by deed, reciting that the debts and legacies had been paid out of the personal estate, conveyed the real estate to *D.*'s devisees. Held, that the devisees could make a good title, without proof of the fact of payment of debts and legacies, as stated in the recital, and that a purchaser from them was not bound to inquire as to such payment. *Storry* v. *Walsh.* vol. 18, p. 559
7. When a trustee has a power of sale over real estate, with power to give receipts, and it is declared that the purchaser shall not be liable for the misapplication of the purchase-money, the payment to

the authorized agent of the trustee, even though he be tenant for life, is not a breach of trust or invalid. *Hope* v. *Liddell* (No. 1); *Liddell* v. *Norton*. vol. 21, p. 183

8. Where an agent is authorized by trustees to receive trust money, and receives it accordingly, the receipt of that money by the agent binds the trustees and discharges the person who paid it. *Robertson* v. *Armstrong*. vol. 28, p. 123

9. Trustees authorized their solicitors to receive trust money. The solicitors received it and handed it over to the tenant for life, whereby it was lost. Held, that a bill by a *cestui que trust*, seeking to charge the solicitors only and not the trustees, could not be maintained, for that it was only through the trustees that the solicitors could be made liable. *Ibid.*

TURNPIKE ACT.

1. By the General Turnpike Act, the trustees are empowered to let the tolls by auction; but amongst other provisions to prevent undue preference, a minute glass is to be turned thrice after each bidding; and it is declared, that if no other person bids, the last bidder is to be the farmer or renter. Trustees under this act put up tolls subject to other conditions, one of which was, that unless there should be three biddings there should be no letting, unless the trustees thought proper to take less than three biddings, and that the trustees should have a reserved bidding. There was one bidding only, which was made by the Plaintiff, whereupon the trustees declared, that if there was no advance they should be obliged to make a reserved bidding. The minute glass was turned thrice, and there was no further bidding. The Plaintiff insisted, that under the express terms of the act he was the purchaser, and he filed his bill for a specific performance. Held, that he was not entitled to relief, and the bill was dismissed, but without costs. *Levy* v. *Pendergrass*. vol. 2, p. 415

2. The trustees of a turnpike road which passed over a hill, were empowered to lower it when necessary. They applied to restrain an adjoining freeholder from making a tunnel under the road, on the ground that it would obstruct the future improvement of the road. The Court, however, held, that it had no authority to interfere, and refused the application. *Cunliffe* v. *Whalley*. vol. 13, p. 411

TWENTY-ONE (GIFT AT).

[*See* PAYMENT (DEBTS AND LEGACIES), VESTING.]

A testator devised an estate to *A.*, subject to the payment of *5s.* a week to *B.*; and in case *B.* should leave any children, he charged the estate with the payment of *5s.* weekly to such children, until they should attain twenty-one; and he further charged the estate with the payment of 100*l.* "to the child or children of *B.*, when and so soon as he, she or they should respectively attain the age of twenty-one," equally to be divided; with a gift over to the issue of any of them dying under twenty-one; *B.* had one child who attained twenty-one, and *B.* being still living: Held, that the 100*l.* became raisable for his child immediately on her attaining twenty-one. *Pearse* v. *Catton*. vol. 1, p. 352

ULTRA VIRES.

[*See* INJUNCTION (COMPANY), PRINCIPAL AND AGENT, RAILWAY.]

1. A railway company became lawfully possessed of shares in another independent railway company. Held, that having no authority to do so by their act of parliament they could not legally, as against one dissentient shareholder, increase their number of such shares, or apply their funds for the support of the second company. *Salomons* v. *Laing*. vol. 12, p. 339

2. A railway company is bound to apply all its moneys and property for the purposes directed and provided for by the act of parliament, and not for any other purpose whatever. Any application of or dealing with the capital, funds, or money in any manner not distinctly authorized by the act is illegal; and where directors, for purposes not authorized by the Act, are proceeding to involve the company or shareholders in liabilities to which they never consented, relief may and ought to be given in this Court. In such a case, one shareholder may sue on behalf, &c. *Ibid.*

3. A company was authorized by three several acts to make three several railways, and raise three several sums for that purpose. A subsequent act declared, that the company mentioned in the three several acts were and ever had been the same, and not separate and distinct companies. Shares were issued for raising the whole capital for the three undertakings, without distinction, and calls were made. Held, that the company had no right to apply the funds in making one only of the railways, abandoning the others; but that a clear allegation not only of the abandonment, but that the directors intended so to misapply the funds in making a part only, was necessary to support a bill to prevent it. *Hodgson* v. *Earl Powis*. vol. 12, p. 392

4. A railway communicated with a river, upon the banks of which the company were empowered to erect wharfs, &c., and take tolls. The navigation of the river having become deteriorated, the company were about to support a bill for improving it. An injunction was granted to restrain the application of the funds of the company towards that object. *Munt* v. *The Shrewsbury and Chester Railway Company.* vol. 13, p. 1

5. Companies having funds for objects which are distinctly defined by act of parliament, cannot be allowed to apply them to any other purpose whatever, however advantageous or profitable that purpose may appear to be to the company, or to the individual members of the company. *Ibid.*

6. It is improper and wrong for railway companies to embark their funds in other railway undertakings; and they have no right to engage or pledge their funds or entangle their affairs in unauthorized transactions, upon the speculation that they may obtain parliamentary authority for doing acts which are beyond their powers at the time when they are done. *Logan* v. *The Earl of Courtown.* vol. 13, p. 22

7. It has not been yet settled to what extent, or subject to what particular limitations, the jurisdiction of the Court ought to be exercised in preventing or checking the erroneous conduct of corporations created by act of parliament for public purposes; but the classes of cases in which this Court has been called on to interfere, arise from a combination, 1. of acts illegal as to the public; 2. breaches of contract with the subscribers; and 3. acts incapable of being rectified by the shareholders themselves, in the exercise of their own powers. *Brown* v. *The Monmouthshire Railway and Canal Company.* vol. 13, p. 32

8. *English* directors of a *Belgian* railway, after their retirement, returned considerable deposits, and purchased up some shares for the company. The managing body concurred. Held, that this was a transaction which could be sanctioned by a general meeting, and, being sanctioned, could not be made the subject of a suit here against the retired *English* directors. *Kent* v. *Jackson.* vol. 14, p. 368

9. In a partnership which is not for a fixed period, one partner has no implied authority to enter into a contract for a lease for twenty-one years of premises to be used for partnership purposes, so as to bind the other partners. *Semble.* *Sharp* v. *Milligan.* vol. 22, p. 606

10. Directors of a company were prohibited giving bills of exchange; but they had powers to borrow on mortgage. They, however, gave bills to secure an existing debt, and a mortgage was, at the same time, executed, under the seal of the company, which was made subject to redemption on payment of the bills. Held, first, that the mortgage was given to secure the debt, and not the payment of the bills, and therefore was not invalid on that account. *Scott* v. *Colburn.* vol. 26, p. 276

11. Directors of a company were alleged to have paid calls merely on a small portion of the shares for which they had subscribed the deed, and they had also, out of the company's funds, purchased part of the chairman's shares, and had cancelled a considerable number of those subscribed for by him and by themselves. This not being authorized by the constitution of the company or by the provisions of the deed of settlement: Held, that it was not a matter of internal management to be confirmed by a general meeting, and a demurrer to a bill to make the directors liable was therefore overruled. *Hodgkinson and Others, on behalf, &c.* v. *The National Live Stock Insurance Company and Others.* vol. 26, p. 473

12. A railway company had authority to keep steam-vessels for the purposes of a ferry. Held, that such vessels when otherwise unemployed, might be used by the company for excursion trips to the sea. *Forrest, on behalf, &c.* v. *The Manchester, Sheffield and Lincolnshire Railway Company.* vol. 30, p. 40

13. In matters strictly relating to the internal management of a company this Court, though it should come to the conclusion that the course adopted is not warranted by the terms of the instrument, will not interfere, even though the minority should have summoned a meeting of all the shareholders, and the majority should have persisted in the course complained of. *Gregory* v. *Patchett.* vol. 33, p. 595

14. But if the measures adopted are plainly beyond the powers of the company, and are inconsistent with the objects for which the company was constituted, then the Court will, at the instance of the minority, interpose to prevent the performance of the act complained of, and it will do so whether an appeal has or has not been made by the minority to the shareholders generally. *Ibid.*

15. The Court will interfere to prevent the directors of a railway company, not having powers so to do, from embarking the funds of the company in carrying on a brewery or a steamboat company, and from speculating in the purchase or sale of stock, and from transferring their business to another company. But it will not inter-

fere to prevent a call not required, or stop a dividend not justified by the pecuniary condition of the company, though it will prevent the illegal apportionment of the dividends amongst the shareholders. *Gregory* v. *Patchett.* vol. 33, p. 595

16. Where the Court interferes by injunction to prevent the performance, by the directors of a company, of an act *ultra vires*, it will also, to the extent of its power, redress the act performed and give relief to the persons injured thereby, although it is not called upon to dissolve the company or wind up its affairs. *Ibid.*

17. The only available property of a company was transferred to two shareholders in lieu of their shares, and the company was thereby practically put an end to, and the debts were thrown on the remaining shareholders. This was sanctioned by a majority of the shareholders at a general meeting. Held, that the majority could not bind the minority in such a transaction, and it was set aside. *Ibid.*

18. An ordinary local agent of an insurance company is not, without special authority, authorized to bind the company by a contract to grant a policy. *Linford* v. *The Provincial Horse and Cattle Insurance Company.* vol. 34, p. 291

19. A mining company, empowered to raise money, gave a security to bankers for moneys due and to become due from the contractor to whom they were indebted. Held, that though the company could not guarantee the debt of a stranger, still, that the advances to the contractor might be valid if he were the agent of the company, and *semble*, that the security would be valid to the extent of the money properly expended by the contractor on the works of the company. *The Crewver, &c. Mining Company (Limited)* v. *Willyams.* vol. 35, p. 353

UNCERTAINTY.

[*See* DESCRIPTION OF GIFT, DESCRIPTION OF LEGATEE.]

1. Gift in will held void for uncertainty. *Baker* v. *Newton.* vol. 2, p. 112

2. A testator (passing over his heir-at-law, the son of his deceased eldest brother) gave 1,000*l.* to the testator's father for life, and after his death to be continued to the testator's younger brother, and proceeded thus: "and after his death to be continued to my next nearest heir, and so on. This property is not meant to be disposed of by any of the family." Held, that the ultimate limitation was void for uncertainty. *Thomason* v. *Moses.* vol. 5, p. 77

3. Bequest of residue to *A.* for life, "and whatever she can transfer to go to her daughters," *B.* and *C.* Held, that the gift to *B.* and *C.* was void for uncertainty. *Flint* v. *Hughes.* vol. 6, p. 342

4. A testator devised his estate on trust for his children. Some of them filed a bill for the administration of the estate, against the trustees and against one *J. G.* The bill charged, that *J. G.* alleged, that the Plaintiffs had contracted to sell him the testator's real estate, and that he had given notice to the trustees of his claim; but the Plaintiffs charged that they had not entered into any agreement to sell to *J. G.*, and that if they had, it had been long since abandoned and waived by *J. G.*; and it further charged, that *J. G.* had not any charge, interest, or claim on the estate. Held, that the allegations against *J. G.* were insufficient, and his demurrer was allowed. *Hodgson* v. *Espinasse.* vol. 10, p. 473

5. It is a common rule of construction, that if the words of a gift are of themselves plain, distinct, and capable of having a legal effect, effect must be given to them, notwithstanding any improbability which may arise from looking at the other parts of the will. On the other hand, if the words are ambiguous in expression or effect, they are not to be rejected for uncertainty, but you must collect, if you can, from the other parts of the will, an indication of what the testator meant by those words, which, by themselves, appear to be ambiguous. *Wilson* v. *Eden.* vol. 11, p. 289

6. The Defendant consented to the Plaintiff's making a watercourse through his land, upon being paid "a proper and reasonable sum." The watercourse was made, but no grant was executed, and no sum arranged. After nine years user the Defendant stopped it up, but he was restrained by decree from so doing, and a reference was made to the Master to settle a proper compensation. *The Duke of Devonshire* v. *Eglin.* vol. 14, p. 530

7. Where a bequest was made to *A.*, on condition that he conveyed his estate to *B.* and *C.*, on such shares as shall be determined by (blank), it was held that the gift was not rendered ineffectual by reason of the blank. *Robinson* v. *Wheelwright.* vol. 21, p. 214

8. *A.* and *B.* were partners for four years in the *K.* mill, and *A.* and *C.* were sub-partners at will. *A.* put an end to his sub-partnership with *C.* They afterwards met, and *A.* drew up this document: "Mr. *C.* to receive three-sixteenths of the *K.* mill during the present partnership of *A.* and *B.* If Mr. *C.* enters into any other business before, to renounce his interest above mentioned, and to

receive 500*l.* as a quit claim." It was taken to a solicitor to draw a formal agreement, who said it was too vague to act upon, and both parties differed as to its construction. Held, that it was not a final concluded agreement, which could be enforced. *Frost* v. *Moulton*.
vol. 21, p. 596

9. The Court also held, that the question of uncertainty and intestacy under the will of Mr. *Thellusson* to be already determined. *Lord Rendlesham* v. *Roberts*.
vol. 23, p. 321

10. *A.* agreed to take *B.* as his servant, "at such wages as might from time to time be agreed on," and *B.* on his part agreed to serve *A.*, and not to set up trade for himself within certain limits. *B.* accordingly entered into and continued in *A.*'s service, at wages agreed on. Held, that there was a good and valuable consideration to support the agreement as against *B.*, and the Court enforced it. *Benwell* v. *Inns*. vol. 24, p. 307

11. *A.*, by contract in writing, agreed with *B.* to take a lease of "those two seams of coal known as 'the two-feet coal' and the 'three-feet coal,' lying under lands hereafter to be defined in the *Bank End* Estate," and *B.* agreed to let to *A.* "the before-mentioned seams of coal." Held, that the contract was sufficiently definite to enforce, and that the true construction of it was, that the boundaries of the estate, which consisted of about twenty-seven acres, were to be thereafter defined. *Hayward* v. *Cope*.
vol. 25, p. 140

12. *A.* agreed to sell an estate to *B.* for 3,000*l.*, "and the further sum of 20 per cent. on any sum the property might realize above that sum at the sale by auction advertised to take place" the next day. *B.* withdrew the estate from the sale. Held, that the contract was sufficiently certain, and might be enforced. *Langstaff* v. *Nicholson*.
vol. 25, p. 160

13. A testator after gifts to "his sister *M. F. T. D.*" and to his niece "*A. T. D.*" (but who were really the sister and niece of his wife), gave a portion of his residue to "his niece *M. F. T. D.*" He had no niece of that name. The Court, being unable to come to a conclusion whether the word "niece" had been by mistake substituted for "sister," or the name *M. F. T. D.* for *A. T. D.*, held, that the gift of the residue was void for uncertainty. *Drake* v. *Drake*. (No. 2.)
vol. 25, p. 642

14. A testator devised a freehold in trust to accumulate the rents for periods of not less than ten years successively at a time, at the expiration of which, the accumulations to be paid to the testator's "sons and daughters, or such of them as should be living at the respective periods of division, and the issue of such of them as shall have died leaving lawful issue, such issue taking their deceased parent's share," to be vested interests in the same respectively at the age of twenty-one years, and so on from time to time until the expiration of twenty-one years after the decease of the survivor of her children. And from and after the expiration of the term of twenty-one years, he devised the same premises unto such of his grandchildren and their issue as should then stand, in respect to him, in equal degree of consanguinity, and their heirs, as tenants in common. Held, that "issue" was to be read "children," and the word "and" to be read "or," and that the devise was neither void for remoteness nor uncertainty. *Maynard* v. *Wright*.
vol. 26, p. 285

15. Gift to "my grandchildren and their issue as shall stand, in respect to me, in equal degree of consanguinity." Held, not void for uncertainty, the sentence being read in the alternative. *Ibid.*

16. Specific performance of an agreement to purchase one-third of a foundry refused, on the ground of uncertainty, the contract not specifying what portion of the purchase-money was to be left in the business, but only a "large portion," and not stating when it was to be paid, or how to be secured, and what interest was to be allowed in the meanwhile. *Cooper* v. *Hood*. vol. 26, p. 293

17. *A. B.*, a trustee, verbally promised his *cestuis que trusts*, that if they would concur in a sale of the trust estate, for its full value, to *C. D.*, he would bequeath to them, by his will, "at least as much as they would get under their father's will." *A. B.* had an interest in the purchase. Held, that it was sufficiently certain, and that this Court would enforce it. *Ridley* v. *Ridley*. vol. 34, p. 478

18. By his will, the testator gave his residue amongst his nephews and nieces, excluding "*John*" *Shutt*. By a codicil, he varied the limitation to this class, and excluded "*William*" *Shutt* "as in his said will was directed." Held, that the exclusion was void for uncertainty, and that they both took a share. *Cope* v. *Henshaw*. vol. 35, p. 420

19. A testator devised to each of his four daughters a house and garden at *G.*, to be built at the expense of his executors. A daughter *M.*, requiring the house, one was built with a garden by *D.*, the executor, who was also residuary legatee and devisee: Held, after the death of *D.*, that the gift was not void, and that *M.* was entitled to the house and garden. *Edwardes* v. *Jones*. (No. 2.)
vol. 35, p. 474

UNCLAIMED DIVIDENDS.

1. A sum of stock was standing in the name of a testatrix, which her executors overlooked, and the dividends remained unclaimed, the stock was transferred to the National Debt Commissioners. Afterwards one *Sanders* procured a probate, in the name of *T. Hunt*, of a forged will of the testatrix, and obtained a transfer. Held, that the probate did not authorize a payment to *Sanders*, and that a party giving faith to the probate was bound to see that the person claiming under it was a real *T. Hunt*. *Ex parte Jolliffe*. vol. 8, p. 168
2. Under the above circumstances, a transfer from the aggregate fund in the name of the commissioners was ordered to be made to the real executor. *Ibid.*

UNDERTAKING.

1. The Court relieved a party from an undertaking to make an admission upon a trial at law, the law on the point having, since the undertaking, been placed in a state of uncertainty, by reason of conflicting decisions of different courts. *Cocks* v. *Purday*. vol. 12, p. 451
2. Upon an alleged misjoinder of husband and wife as petitioners, counsel, upon the instructions of the solicitor, undertook to amend by making it the petition of the wife by her next friend. Held, that the solicitor was not personally responsible for the performance of the undertaking. *In re Williams*. vol. 12, p. 510
3. Where money is ordered to be paid to one on his undertaking to satisfy another, the Court will enforce the undertaking. *Sirdefield* v. *Thacker*. vol. 18, p. 588
4. A sum was ordered to be paid to *A. B.* for past maintenance of an infant, on his undertaking to pay the infant's schoolmaster's bill. *A. B.* having shewn a disposition not so to apply the money, the Court stayed the payment, and ultimately, on the application of the schoolmaster, ordered payment to him out of the fund. *Ibid.*

UNDUE INFLUENCE.

1. The Court, under the circumstances of the case, refused to set aside deeds executed by one under restraint in a lunatic asylum, under medical certificates. *Selby* v. *Jackson*. vol. 6, p. 192
2. *A. B.*, very soon after coming of age, was induced by *C. D.*, his superior officer, to accept bills for 3,000*l.* at two months, for his accommodation, which were handed by *C. D.* to *E. F.*, a money lender in payment of a debt of 2,590*l.* *E. F.*, who was privy to the transaction, afterwards agreed to arrange the renewal of these and another bill for 500*l.* for twelve months in consideration of *A. B.*'s promissory note for 2,500*l.* payable in three years, which sum *E. F.* charged for his expense and trouble. *E. F.* was, under the circumstances, restrained till the hearing, from suing for the 2,500*l.* *Lloyd* v. *Clark*. vol. 6, p. 309
3. A niece, two months after she came of age, and after her guardians had fully accounted to her, entered into a voluntary security for her uncle, by whom she had been brought up, and who was considered by the Court as standing *in loco parentis*. The Court set it aside. *Archer* v. *Hudson*. vol. 7, p. 551
4. Where a transaction takes place between parent and child, just after the child has attained twenty-one, and prior to what may be called a complete "emancipation," without any benefit moving to the child, the presumption is that an undue influence has been exercised on the part of the child, and a party seeking to maintain such a transaction must shew that that presumption is adequately rebutted. *Ibid.*
5. Though Courts of equity do not interfere to prevent an act even of bounty between parent and child, yet they will see that the child is placed in such a position as will enable him to form an entirely free and unfettered judgment, independent altogether of any sort of control. *Ibid.*
6. Voluntary settlement by a younger sister, of the whole of her present and future property, principally in favour of her eldest sister, set aside, the eldest sister having obtained great ascendancy and influence over the younger, the circumstances of the transaction being open to suspicion, the settlement being very improvident, and the settlor not having had the benefit of independent professional advice. *Harvey* v. *Mount*. vol. 8, p. 439
7. A man who is in distress may nevertheless contract, and if being in distress, he procures other persons to consent to an agreement, which he would not himself have requested or consented to if he had not been in distress, and afterwards successfully urges and obtains the performance of that agreement, and receives the money secured by it, and after that, acquiesces for a length of time in the performance, without any notice of dissatisfaction or complaint, he is not entitled to set aside the transaction on the mere ground of his poverty and distress, in the absence of any deception or fraud proved to have been practised upon him. *Rice* v. *Gordon*. vol. 11, p. 265

8. Conveyance by the Plaintiff, an eldest son, to the Defendants, his brothers, of his interest in an estate, for an inadequate consideration, set aside, on the ground of the Plaintiff's ignorance of his rights, and of the absence of a full and free disclosure of all the material facts known by the Defendants, and of the Plaintiff being under pecuniary pressure and without proper legal advice. *Sturge* v. *Sturge*. vol. 12, p. 229

9. About six months after a lady came of age, a creditor of her father obtained from her securities for his debt. The Court was of opinion, that the creditor had not used any undue or fraudulent means, or availed himself of the fraud of any other party to procure payment, and held, that the mere fact of a daughter voluntarily paying the debt of her father, who was in difficulties, was not, of itself, ground for imputing undue influence to the father, or, even if such influence had been exercised, for imputing knowledge of it to the creditor who received payment in that way. *Thornber* v. *Sheard*. vol. 12, p. 588

10. An agreement to release executors entered into about three months after an infant came of age, and carried into effect about three months subsequently by deed, set aside; the agreement having been entered into in the absence of proper independent advice and assistance, and without a proper opportunity of examining the accounts, and the deed having been executed under the same influence, and without a proper and necessary examination and verification of the accounts. *Thornber* v. *Sheard*. vol. 12, p. 589

11. An old woman was induced, without consideration, to transfer her stock into the name of another, who, by his answer, swore, that there had been a gift of it to him, subject to a trust for the transferror, for life. An injunction to restrain the transfer and receipt of the dividends was continued. *Custance* v. *Cunningham*. vol. 13, p. 363

12. Distinction between the cases where, as between strangers, benefits are obtained by undue influence, and arrangements entered into for the peace of families and the security of family property. *Hoghton* v. *Hoghton*. vol. 15, p. 278

13. If a person obtain by voluntary donation a large pecuniary benefit from another, the burden of proving the transaction righteous falls on the person taking the benefit, and this is proved by shewing that the donor fully understood what he was doing; but where the relation of the parties is such, that undue influence might have been exercised, it must also be shewn that the disposition of the donor was not produced by undue influence. In many cases, the Court, from the relations existing between the parties, infers the probability of undue influence, as in the cases of guardian and ward, solicitor and client, spiritual adviser and pupil, medical adviser and patient, and the like. Transactions between such persons are watched with jealousy, not only to see that the party fully understood the act, but also that it was not brought about by the exercise of that influence. The relation of parent and child comes within this class. *Ibid.*

14. Such an influence is not discountenanced by the Court, but it ought to be exercised for the benefit of the person subject to and not of the person possessing it. *Ibid.*

15. In family arrangements, though the influence exists, and has probably been exercised, yet if the transaction be one that tends to the peace or security of the family, to the avoiding of family disputes and litigation, or to the preservation of the family property, the same principles are not applied as to dealings between strangers, but such principles are then applied, as, on the most comprehensive experience, have been found to tend most to the interest of families. The cases relating to the resettlement of the family property appear stronger. *Ibid.*

16. A married woman, having separate estate, joined with her trustee, who was her confidential medical attendant, in granting annuities secured on her separate estate for his benefit. She afterwards sought to set them aside, as against the grantees. Held, that the *onus* of proving their invalidity was on her, and it appearing that she understood the transaction, and no undue persuasion or coercion having been proved, it was held that they could not be impeached. Held also, that the principle of *Archer* v. *Hudson* did not apply to the case. *Blackie* v. *Clark*; *Cock* v. *Clark*. vol. 15, p. 595

17. Whenever a person obtains, by voluntary donation, a benefit from another, he is bound, if the transaction be questioned, to prove that the transaction was righteous, and that the donor voluntarily and deliberately did the act, knowing its nature and effect. *Cooke* v. *Lamotte*. vol. 15, p. 234

18. The above rule is not confined to the cases of attorney and client, parent and child, &c., but is general. *Ibid.*

19. A nephew, who was provided for by his aunt's will, obtained a *post obit* bond from her. It was set aside, he not having proved that she knew that the effect of the bond was to make her will irrevocable. *Ibid.*

20. When a man obtains, without consideration, a security from a lady to whom he is engaged to be married, the Court requires him to shew the *bona fides* of the transaction. *Cobbett* v. *Brock*.
vol. 20, p. 524

21. A debtor induced a lady, to whom he was engaged, to become security for a debt. After the marriage, she insisted that she had been imposed upon. Held, that the only duty of the creditor (who was aware of the relation between the parties) towards the lady was, to see that she had proper professional assistance, and that any fraud or misrepresentation of the debtor in the transaction, of which the creditor had no notice, did not affect his security. *Ibid.*

22. Transactions between parent and child are to be regarded with jealousy, but, in arrangements between father and son for the resettlement of family estates, if the resettlement be not obtained by misrepresentation or suppression of the truth, if the father acquires no personal benefit, and if the settlement is a reasonable one, the Court will support it, even though the father did exert parental authority and influence over the son to procure the execution of it. *Hartopp* v. *Hartopp*. vol. 21, p. 259

23. Parental influence is inseparable from arrangements between father and son for the resettlement of family estates; but its existence and operation are not sufficient to invalidate the transaction, if it be not exerted for the benefit of the person possessing it. *Ibid.*

24. The Plaintiff was tenant in tail, and the Defendant, his father, tenant for life of family estates. The Plaintiff, eleven months after attaining twenty-one, being in pecuniary difficulties, joined his father in a resettlement of the estates. The Court, though satisfied that parental authority and influence had been exerted to obtain the execution of the settlement, but not for the father's individual advantage, who obtained no direct personal benefit from it, supported the settlement, holding that a jointure thereby provided for the son's mother did not come within the definition of benefit to the father, and that the postponement of the son's daughters to his younger brother was not unreasonable, considering that thereby the estates were made to accompany the family title. *Ibid.*

25. Observation on the application of the doctrine of undue influence. *Fowler* v. *Wyatt*. vol. 24, p. 232

26. A gift by a child to her parent immediately after attaining twenty-one cannot, under ordinary circumstances, be supported. *Bury* v. *Oppenheim*.
vol. 26, p. 594

27. Soon after attaining twenty-one a daughter sold her reversionary interest and the amount was received by her father. He said she had determined that the most advantageous course for her to adopt would be to give the money to him to be applied by him in improving and extending his business, in order to increase his estate, and to enable him better to provide for his family after his decease, and she accordingly gave him the money. Held, that the father was a trustee of the money for the daughter, and he was bound to repay it. *Ibid.*

28. A young lady, two years after she came of age, granted a mining lease, as to part of the property in possession, and as to the rest, in reversion, to her brother-in-law and uncle, at the suggestion and advice of her father's executor, and with no independent advice. Three months afterwards, the executor was taken into partnership with the lessees. It appeared that applications of other persons to become lessees had been discountenanced, and concealed from the knowledge of the lady. Held, that to support the lease in equity, the lessees were bound to shew, that no better terms could have been obtained; that the grantor had the fullest information on the subject; that she had separate, independent and disinterested advice, and that she had deliberately and intentionally made the grant; and the lessees having failed in proving this, the lease was cancelled. *Grosvenor* v. *Sherratt*. vol. 28, p. 659

29. A mining lease granted by a person two years after coming of age set aside. *Ibid.*

30. Purchase from a poor sick man, shortly before his death, at an under-value, and under circumstances of great precipitation and without proper protection, set aside at the instance of his heir-at-law. *Clark* v. *Malpas*. vol. 31, p. 80

31. Whether a transaction can be set aside for undue influence, when it has been exercised not by the party obtaining benefits under it, but by a third person, *quære*. *Bentley* v. *Mackay*.
vol. 31, p. 143

32. A conveyance by an aunt to her nephew, without any consideration, of all her real estates, reserving a life estate only to herself, and containing no power of revocation, supported, it appearing that the proposal had emanated from the aunt; that the deed had been prepared, on her instructions, by the family solicitor; that it had been fully explained to her, and that the nephew had possessed no further influence than that arising from his aunt's attachment for and confidence in him. *Toker* v. *Toker*.
vol. 31, p. 629

33. A conveyance of a large estate by a client to a barrister, who had been successfully engaged for her in recovering the estate, in consideration of his services, set aside for undue influence. *Broun* v. *Kennedy*. vol. 33, p. 133
34. Held also, that such a deed could not be supported, either on a previous contract to pay her 20,000*l*., or as executed in performance of a moral obligation. *Ibid.*
35. Held, that a purchaser from an old, infirm and ignorant woman, having no professional advice, was bound to prove that he gave the full value for the property, and failing in such proof, the transaction was set aside, with costs. *Baker* v. *Monk*. vol. 33, p. 419
36. Securities, given by the Plaintiff six months after he attained twenty-one to the Defendants for a debt due to them from his elder brothers, set aside with costs. *Sercombe* v. *Sanders*. vol. 34, p. 382
37. Voluntary conveyance to a mother by a daughter six months after she had attained twenty one, and seven days before the daughter's marriage, but unknown to her husband, set aside, both on the ground of the maternal influence, and of the fraud on the husband's marital rights. *Chambers* v. *Crabbe*. vol. 34, p. 457
38. A son attained twenty-one in 1855, and in 1857 he conveyed to his father his reversionary estate and interest, in consideration of moneys advanced for his commission, outfit and debts during his minority, and a further sum of 500*l*. then advanced. Held, that the deed could not stand except as a security for the 500*l*. *Potts* v. *Surr*. vol. 34, p. 543
39. Transaction between father and son, seven years after the latter came of age, by which the father obtained a benefit of 5,790*l*. in the event of the son dying without children supported; there being a valuable consideration on the part of the father, the settlement being a fit and proper family arrangement, and the transaction not having been impeached until after the death of the father. *Ibid.*
40. Securities obtained from sons for their father's debt set aside, the creditors failing to prove (as they were bound to do) that the sons knew the true nature of the transaction, and that no undue influence had been exercised by the father. *Berdoe* v. *Dawson*. vol. 34, p. 603

UNIVERSITY.

College statutes made under the 19 & 20 *Vict.* c. 88, held not to affect the rights of a founder's kin. *Attorney-General* v. *Sidney Sussex College Cambridge and Trinity College Oxford, and Frederick Greenhill.* vol. 34, p. 657

UNMARRIED.

[*See* NEXT OF KIN.]

1. Where there is a gift over in the event of a person, who is not married at the time, dying "unmarried," it means without ever having been married. *Heywood* v. *Heywood*. vol. 29, p. 9
2. In a limitation in a marriage settlement, giving the whole fund, after the death of the parents, to an only child, if all but one should have died "unmarried and without issue," the word "unmarried" was construed "without having been married," and one having married, it was held that the clause became inoperative. *Ibid.*

USUAL COVENANTS.

[*See* NOTICE.]

USURY.

1. The Plaintiff lent the Defendant a sum of money on his bond and an equitable deposit. The bond, on the face of it, was usurious, and an action having been brought on it, the Plaintiff failed. The Plaintiff afterwards came into equity, shewing that the bond had been erroneously prepared; and that, in fact, the contract was not usurious, and praying that the instrument might be reformed, and effect given to his equitable deposit. The Court, being satisfied of the error, Held, that the Plaintiff was entitled to the relief he asked. *Hodgkinson* v. *Wyatt*. vol. 9, p. 566
2. In 1816 *A*. transferred 10,000*l*. Three per Cents. to *B*., which he sold, and after retaining 6,000*l*. repaid the surplus to *A*. Concurrently *B*. gave to *A*. a bond, conditioned for the repayment of of 6,000*l*. and five per cent. interest, and he wrote to *A*., engaging to replace the 6,000*l*. in the Three per Cents. In 1822 *B*. admitted his obligation to restore to *A*. the stock sold out. The Court, in 1852, considering that the contract was for restoring the stock, and that *A*. had not the option of taking stock or money, held that the contract was not usurious. *Goddard* v. *Lethbridge*. vol. 16, p. 529
3. An account between *A*. and *B*. having been settled, *A*. executed a general release to *B*. Held, that the account could not be opened by *A*., on the ground of usury, until the release had been set aside, and that the release could not be set aside on the mere ground of usurious

items having entered into the account, of which both parties were cognizant. *Fowler* v. *Wyatt.* vol. 24, p. 232

VENDOR AND PURCHASER.

[*See* CONDITIONS OF SALE, CONTRACT, PURCHASE IN LOTS, RESCINDING CONTRACT, SALE BY AUCTION, SALE BY COURT, SPECIFIC PERFORMANCE, TIME OF THE ESSENCE, TITLE, UNDUE INFLUENCE, VENDOR AND PURCHASER (CONDITIONS OF SALE), VENDOR AND PURCHASER (CONVEYANCE), VENDOR AND PURCHASER (MISREPRESENTATION), VENDOR AND PURCHASER (TITLE), WAIVER OF REQUISITIONS AS TO TITLE.]

1. A purchaser from the Court, is, in equity, the owner, from the order confirming the report, and any deterioration of the property arising from accident or by fire, without the default of the vendor, falls upon the purchaser. *Robertson* v. *Skelton.* vol. 12, p. 260
2. If, between the contract and conveyance, a loss arises by accident, which brings with it legal obligation which must be immediately satisfied, the expense incurred by the vendors is payable by the purchaser. *Ibid.*
3. After the confirmation of the report, a part of the premises fell down and damaged the neighbouring property, the owner of which threatened to bring an action, and the remainder was ruinous and dangerous to the public. The vendor having reinstated and repaired the premises, the Court held, that the purchaser was bound to indemnify him, and on petition, ordered a reference to ascertain the expenses properly incurred. *Ibid.*
4. By conditions of sale, interest was payable from *November*, 1846, if, "from any cause whatever," the purchase should not be then completed. The vendors did not make out their title until *March*, 1849. Held, that interest was payable only from the last mentioned period. *Ibid.*
5. *A B.*, being desirous of raising money to enable him to prosecute his claim to a fund in Court, applied to a solicitor for that purpose. An agreement was executed, by which the solicitor agreed to lend 1,000*l.*, and *A. B.* agreed to purchase from him some land for 6,000*l.* (ten times its value). The land was conveyed, and the fund in Court mortgaged by *A. B.* for the 6,000*l.*; but the 1,000*l.* was not advanced at the time. The Court on the ground of the gross inadequacy of value, coupled with the other circumstances of the case, set aside the whole transaction with costs. *Cockell* v. *Taylor.* vol. 15, p. 103
6. Inadequacy of value, though it is not by itself a sufficient ground for avoiding a sale, is yet of great weight when coupled with circumstances of oppression. *Ibid.*
7. In the absence of any express stipulation, the expenses and outgoings of property sold must be borne by the vendors, down to the time when the purchaser could prudently take possession, *i. e.* down to the time when a good title was shewn. *Carrodus* v. *Sharp.* vol. 20, p. 56
8. Special conditions of sale are construed most strictly against the vendor. *Hayford* v. *Criddle.* vol. 22, p. 477
9. A vendor has duties in that character, which he cannot get rid of by such conditions of sale. *Greaves* v. *Wilson.* vol. 25, p. 290
10. It is the duty of a vendor, in his particulars of sale, to describe the property with perfect accuracy, and not leave it to inference. *Swaisland* v. *Dearsley.* vol. 29, p. 430
11. A purchaser was let into the receipt of the rents before completion and without payment of his purchase-money. Great delay having occurred, and no payment having been made to the vendor, he gave notice to the tenants and prevented any further receipt of the rents by the purchaser. Held, that this did not deprive the vendor of his right to have the contract specifically performed. *Colby* v. *Gadsden.* vol. 34, p. 416

VENDOR AND PURCHASER (CONVEYANCE).

1. *A.* agreed to demise certain premises to *B.* There was an outstanding equitable interest vested in *C.* Held, that *B.* was bound to accept a demise from *A.* in which *C.* joined; and was not justified in insisting on *A.* obtaining a release from *C.* in order to enable him alone to make a valid demise. *Reeves* v. *Gill.* vol. 1, p. 375
2. *A.*, who possessed a real estate, committed an act of bankruptcy; he afterwards took the benefit of the Insolvent Debtors Act, and was subsequently declared bankrupt. Held, that the assignees in bankruptcy could not make a good title to a real estate of the bankrupt; that the estate was vested in the assignees of the insolvency, and that the objection was one of title and not of conveyance. *Sidebotham* v. *Barrington.* vol. 3, p 524
3. A testator gave his real and personal estate to *A.*, subject to the payment of his debts and certain annuities, and appointed him executor. Held, that *A.* could make a good title to the real estate, without the concurrence of the annuitants, and that a purchaser from *A* was not bound to see to the application of

the purchase money. Held also, that the objection was one of title, and not of conveyance. *Page* v. *Adam.*
vol. 4, p. 269

4. The completion of a contract having been delayed for thirteen years, the property became deteriorated by dilapidations. Held, under the circumstances, that the loss must fall on the purchaser, as the state of the title was such, that he ought to have completed his purchase and taken possession. *Minchin* v. *Nance.*
vol. 4, p. 332

5. Lessee of a house and fixtures agreed to pay the expense of preparing the agreement. Held, that he was liable to pay the costs of preparing, and of copies of an inventory of the fixtures referred to by the agreement. *In re Thomas.*
vol. 8, p. 145

6. It being one of the terms of a contract between vendor and purchaser, that certain parties were to join in the conveyance, the Court would not enter into the question, whether they were necessary or proper parties. *Benson* v. *Lamb.*
vol. 9, p. 502

7. On a sale by a trustee, he stipulated that his receipt should be deemed an effectual and conclusive discharge, and that the purchaser should not require the concurrence of the heir or *cestui que trust.* A decree was made for specific performance and reference as to title. The Master found in favour of the trustee; and upon exceptions, the purchaser contended, that the rule as to the concurrence of the *cestui que trust* being one for their protection, it was a breach of trust to stipulate that they should not concur: but the Court held the point concluded by the decree. *Wilkinson* v. *Hartley.*
vol. 16, p. 183

8. The Plaintiff agreed to sell the Defendant an orchard, described as being in the "occupation of *L. P.*," and that the purchaser should have "possession" on the day appointed for completion. Held, that "possession" did not mean "personal occupation," and a decree for specific performance was made against the defendant, although the Plaintiff was unable, by reason of *L. P.*'s tenancy, to put him in actual occupation of the premises. *Lake* v. *Dean.* vol. 28, p. 607

9. An official manager sold some property, stipulating that the purchaser should accept a conveyance from him, without requiring the concurrence of any other person, for any purpose whatsoever; but if the purchaser considered the legal estate to be outstanding, and should require a conveyance thereof, he should bear all the expenses. The purchaser was to pay the purchase-money on a day named, at which time the purchase was to be completed. Held, that the purchaser was bound to pay his purchase-money on having a conveyance of the equitable estate from the official manager, the vendor being bound subsequently to assist in getting in the legal estate at the purchaser's expense. *The Official Manager of the Sheerness Waterworks Company* v. *Polson.* vol. 29, p. 70

VENDOR AND PURCHASER (MISREPRESENTATION).

[*See* FRAUD, MISREPSENTATION, SPECIFIC PERFORMANCE WITH COMPENSATION.]

1. Where the vendor of land in lots for the purpose of buildings, accompanies his description, particulars, and conditions of sale, with a map delineating the intended divisions of the property by new roads, he must be understood to hold out expectations that the lots will be so divided, and it would not be competent to him to divide the land in a different manner, so as to attract an occupancy and population entirely different from that which would have been produced by acting on the plan proposed and held out at the sale. *Peacock* v. *Penson.*
vol. 11, p. 355

2. A vendor took an exception, which contested the validity of his own title. Held, that it was irreguiar. *Bradley* v. *Munton.*
vol. 15, p. 460

3. Leaseholds were sold under the Court, described as "a bonded sugar refinery," and the lease was referred to, which contained no such restriction. The abstract shewed a prior agreement for the lease of the premises, to be used "for refining sugar in bond." The purchaser accepted the title, paid his purchase-money into Court, and was let into possession. The lessors afterwards instituted a suit to rectify the lease, by introducing the restriction. The Court refused to compel the final completion of the purchase, or part with the purchase-money, until the result of the suit was known. *Bentley* v. *Craven.*
vol. 17, p. 204

4. It is not, generally, the duty of a purchaser to inform a vendor of any of the circumstances which may make it desirable for him to purchase. *Dolman* v. *Nokes.* vol. 22, p. 402

5. The Plaintiff had worked the coal under his estate, but abandoned it as unprofitable. Twenty years afterwards, the Defendant cleared the pit and examined the coal in the shaft with other persons, and subsequently contracted for a lease. The colliery turned out to be worthless. Held, that the Defendant could not resist a specific performance, on the ground of the Plaintiff not having communicated the fact of his having worked the mine and found it unprofitable. Held also, that

taking possession of the mine by the intended lessee was not an acceptance of the title. *Haywood* v. *Cope*.
vol. 25, p. 140

6. The doctrine of *suppressio veri* applied to a purchaser. *Summers* v. *Griffiths*.
vol. 35, p. 27

VENDOR'S LIEN.

1. A vendor conveyed his estate to a purchaser, and took a bond for the purchase-money. He afterwards sued at law on the bond, and in equity insisting on his equitable lien. He was put to his election in which court he would proceed. *Barker* v. *Smark*. vol. 3, p. 64

2. Extent of lien on a fund, where the grantor of an annuity agreed to sell to the grantee the fund on which the annuity was secured, and to repurchase the annuity, but, in consequence of a mutual mistake, the contract for the sale of the fund could not be specifically performed. *Colyer* v. *Clay*. vol. 7, p. 188

3. *A.* conveyed an estate to *B.*, and, according to the conveyance, an acceptance was given "in full satisfaction for the absolute purchase;" but in reality, it was agreed, that the vendor should have a mortgage for the money. Before the acceptance became due, *B.* mortgaged to *C.*, who employed the same solicitor as had been engaged in the purchase, and *C.* had notice that the bill had not been paid and of the form of the conveyance. Held, first, that *C.* was affected by the notice in his solicitor; and secondly, that under the circumstances, he was bound to inquire into the true nature of the transaction between *A.* and *B.*, and consequently that his security ought to be postponed to *A.*'s. *Frail* v. *Ellis*.
vol. 16, p. 350

4. The consideration, as stated in a conveyance, was 150*l.* paid and an acceptance for 300*l.* Held, that the form of the deed was not conclusive, and that it was competent for the vendor to shew, that he had stipulated for a lien for the amount of the acceptance. *Ibid.*

5. *A.* agreed to purchase an estate from *B.*, and, upon the estate being conveyed, to grant a life annuity to *B.*, "to be secured by bond." Held, that *B.* had no lien on the estate for payment of the annuity, and was merely entitled to have it secured by the bond of the purchaser. *Dixon* v. *Gayfere*. (No. 3.) vol. 21, p. 118

6. The agent of vendors, who had authority to receive the purchase-money, had in his hands a sum belonging to the purchaser sufficient for that purpose, and was directed by him to apply it in payment. The agent accordingly debited the purchaser's account and credited the vendors' account with the amount, and he rendered to the vendors an account, charging himself with the sum as received from the purchaser. Held, that this was not a valid payment to the vendors, and that they had still a lien on the estate for a part of the money lost by the bankruptcy of the agent. *Wrout* v. *Dawes*.
vol. 25, p. 369

7. A trustee purchased an estate on behalf of the trust. The vendor executed a conveyance to the trustee, which recited the trust, and that the trustee had called in trust moneys sufficient to pay the purchase-money, and it contained a receipt for the whole purchase-money. In fact only part was paid, and the trustee gave his bond and a memorandum of deposit for the deficiency, the latter reciting that the vendor had lent the trustee that sum to enable him to complete. Held, that the vendor had no lien on the title-deeds in his possession for the unpaid purchase-money. *Muir* v. *Jolly*. vol. 26, p. 143

8. The Plaintiff agreed with *Howlett*, in consideration of his erecting some houses thereon, to grant him a building lease of some land, with the option of purchasing the fee. The Plaintiff advanced *Howlett* 970*l.* to enable him to build. Afterwards *Evans* and *Paine*, jointly, made further advances to *Howlett* for the same purpose. Subsequently *Evans* (who was the solicitor both of the Plaintiff and of *Paine*) induced the Plaintiff to execute a conveyance to *Howlett*, without receiving the consideration, in order that *Howlett* might then execute a mortgage to *Evans* and *Paine* to secure their advances; but on the promise of *Evans* alone, that the conveyance and the mortgage should be held on behalf of the Plaintiff until the "land could be sold or a transfer of the said mortgages obtained, and that in either case the Plaintiff should, in the first place, out of the moneys obtained by such sale or transfer, be paid the purchase-money" and advances. Held, that the Plaintiff had lost his lien for his purchase-money, and his priority for it and his advances over the mortgage. *Smith* v. *Evans*. vol. 28, p. 59

9. Upon a sale of a debt proved in an administration suit, the purchaser gave a bond for the purchase-money, payable by instalments. Held, that he had not lost his lien on the debt for the payment of the unpaid purchase-money. *Collins* v. *Collins* (No. 2); *Downes* v. *Downes*.
vol. 31, p. 346

10. The rights of the public, and of debenture creditors and others claiming under the company are subordinate to the vendor's lien for unpaid purchase-money. *Walker* v. *The Ware, &c. Railway Company*. vol. 35, p. 52

11. The owners of land taken by public companies under their compulsory powers

have the ordinary vendor's lien for unpaid purchase-money, and they are entitled to enforce that right by a sale of the land. *Walker* v. *The Ware, &c. Railway Company.* vol. 35, p. 52

12. This lien extends not only to the value of the land, but also to the amount of compensation for damages. *Ibid.*

13. This right of lien is unaffected by the deposit under the 85th section of the Lands Clauses Consolidation Act, and by a deposit, by agreement, before the amount payable has been ascertained. *Ibid.*

14. In a suit by an unpaid vendor, the Court decreed a specific performance, and the payment of the purchase-money and damages. The purchasers were unable to pay, and the property was in the possession of a receiver in another suit instituted by persons claiming charges under the purchasers. A petition by the vendor served upon the purchaser and the Plaintiffs in the other suit to enforce his lien and obtain a sale of the property, was dismissed with costs, the proper remedy being by bill. *The Attorney-General, on behalf of her Majesty* v. *The Sittingbourne, &c. Railway Company.* vol. 35, p. 268

VESTING.

[*See* CHILDREN, ENTITLED, GIFT TO A CLASS (SUBSTITUTION), "PAID" READ "PAYABLE," PAYMENT (DEBTS AND LEGACIES), PERIOD OF DIVISION, SURVIVOR.]

1. Bequest of testator's estate, to be equally divided between his children on attaining twenty-one, with a power of advancement "from their respective portions" of the testator's estate. A child survived, but died under twenty-one. Held, that he took a vested interest. *Vivian* v. *Mills.* vol. 1, p. 315

2. A testator gave real and personal estate to trustees, to accumulate the rents, &c. for twenty years after his decease; and, after certain payments, to stand possessed of the accumulated fund, in trust for all and every the child and children of his children *A.*, *B.* and *C.* "now born or who shall hereafter be born, during the lifetime of their respective parents, as should attain twenty-one or marry with consent, and whether born or unborn when any other of them attain the age or time aforesaid, and their respective executors, administrators and assigns."

At the expiration of the twenty years there were several children of *B.* who had attained twenty-one; but *A.* and *B.* were still living. Held, that the grandchildren had vested interests in the fund, subject to be divested or diminished in the event of there being other children of *A.* or *B.* who should attain twenty-one or marry.

Held also, that, in the meantime, the grandchildren who had attained vested interests were entitled to the income of the accumulated fund. *Scott* v. *The Earl of Scarborough.* vol. 1, p. 154

3. A testator gave to his wife, for life only, all his freeholds, &c., as also his capital in trade for her life, but nevertheless in trust, at her death, "for his then surviving children, share and share alike, independent of the rental of his said estates," which he gave "to his surviving female children;" and he proceeded thus:—"On the decease of any of the children, should they die without issue, that share to fall to the rest, and so on to the last female child; but should they marry and have children, then their share to go to the said child or children, from the last female child to the males of my body." Held, that the children of a daughter of the testator, who survived him but died in the life of the widow, took no interest under the will. *Wordsworth* v. *Wood.* vol. 2, p. 25

4. A gift in terms importing a present vested interest with a postponed time of payment is not made contingent by a direction to accumulate till the time of payment arrives. *Blease* v. *Burgh.* vol. 2, p. 226

5. A testator devised a copyhold estate to trustees, in trust to pay the rents to his wife until his youngest child attained twenty-one, she maintaining his children until that event; and when and as soon as that event should happen, upon trust to pay one-fifth of the rents to his wife for life. He then gave the remaining four-fifths separately to his four daughters, *nominatim*, for life, with remainder to their respective children; and it was his will that if any of his children should die without issue that the share of her so dying should go to the children of such of his daughters as should leave issue; but in case all his daughters should die without leaving lawful issue, then he devised all his said real and personal estate unto his brothers and sisters; he subsequently devised the one-fifth given to the wife for life in a similar manner. *A.*, one of his daughters, died without issue before the youngest attained twenty-one. Held, that the shares vested on the youngest attaining twenty-one; that the gift over was only of vested shares, and therefore that there was an intestacy as to the one-fifth intended for *A.* *Bastin* v. *Watts.* vol. 3, p. 97

6. A testator devised his freeholds to pay certain annuities, and accumulate the surplus rents so as to become part of

his personal estate: and, subject to the charges, to the use of the first and other sons of his son *A.* in tail, with remainder to his daughter *B.* for life, with remainder to her first and other sons in tail, &c.; and he directed that no person should, under the limitations, become entitled in possession while any antecedent limitation remained in contingency. And he gave his personal estate to the children of *A.* and *B.* "except the eldest son," to be transferred to all his younger grandchildren, equally to be divided between them as and when the sons attained twenty-one, and the daughters attained that age or married, it being his will that each of their several shares and interests should become vested at that age, or the previous marriage of daughters, though such shares should not become payable or transmissible till after the demise of both his son and daughter; but, in the meantime, he empowered his trustees, though the parents of his grandchildren should be living, to apply the interest of each grandchild's "presumptive share, even including an eldest son's share, in their maintenance and education;" and the surplus was to accumulate and be payable along with their respective original shares when the same became vested and transmissible, and the payments were to be allowed to the trustees, though such grandchildren should not gain a vested interest. And the testator declared, that after the death of *A.* and *B.*, as well as during their lives, his trustees should in the meantime and until the share or shares of all his grandchildren of and in the trust funds should become vested and assignable, transferable, or payable, apply the dividends of the trust funds towards the maintenance and education of every such child and children respectively, including even the eldest. *A.* and *B.* were still living: *A.* had no children, but *B.* had an eldest son and other children. Held, first, that the eldest son of *B.* had not a vested interest in the personal estate; secondly, that the other children took vested interests, subject to be divested partially by the birth of other children; and thirdly, that all the children of *B.*, including the eldest son, who had attained twenty-one, were entitled to have maintenance. *Ellis* v. *Maxwell.* vol. 3, p. 587

7. Gift to *A.* for life, with remainder, in case *A.* died unmarried (which happened), between *B.* and *C.*, "or such of them as should be then living," and the lawful children of such of them as should be then dead, "for the share of the father or mother deceased only." *B.* and *C.* died in the lifetime of the tenant for life. *B.* had issue, *C.* had none. Held, that *C.*'s interest was not vested, and that his representatives were not entitled. *Willis* v. *Plaskett.* vol. 4, p. 208

8. Bequest of the interest of the residue to the widow for the maintenance of the testator's children; and after her decease, the property "to be shared equally amongst all his children, if they should have attained twenty-one, and if any had not attained that age, then that his executors should act as trustees until the eldest attained that age, and then pay him his share, and each one as he or she attained that age." A child who died under twenty-one, in the lifetime of the widow, held not to have a vested interest. *Butcher* v. *Leach.* vol. 5, p. 392

9. A testator gave a fund, subject to the life interest of his wife, to *A.*, *B.* and *C.*, equally to be divided between them; "but in case of the decease of *C.* without leaving lawful issue," he gave her one-third between *A.* and *B.* Held, that upon the decease of the wife, *C.*, who was then living, became absolutely entitled to one-third of the fund. *Barker* v. *Cocks.* vol. 6, p. 82

10. A testator gave his real and personal estate, after paying four annuities, to one for life, and after his death he directed his personal, and the produce of his real, estate to be divided amongst the children of *A* living at the testator's death, when the youngest attained twenty one, if the annuitants should be then dead; but if not, then his trustees were either to invest it and pay and apply the residue of the income in the maintenance, &c. of the children, according to their discretion, or accumulate, such accumulations to be paid, after the death of the surviving annuitants, with the original shares. There was a gift over in the event of the death of any child who should become entitled to a distributive share before his share became "payable." One of the children predeceased an annuitant. Held, nevertheless, that the bequest was vested, and that the gift over did not take effect. *Butterworth* v. *Harvey.* vol. 9, p. 130

11. A bequest of residue to trustees on the trusts after mentioned, followed, first, by a trust to provide for annuities, then by a trust to pay interest to legatees for life, and then by a trust to "pay and transfer" the capital to the children of the tenants for life, gives to those children an interest which vests immediately on the testator's death. *Salmon* v. *Green.* vol. 11, p 453

12. A sum was vested in trustees, upon trust, declared by deed. The deed recited an intention to make some provision for *A.* and her children, and declared, that the trustees should hold the fund for *A.* for life, and upon her death, or doing any act to incumber her interest, the trustees were to stand possessed, "if

there should be one child of *A.* then living, the said stock to be an interest vested in such child at twenty-one, and to be paid accordingly, if such age should happen after the death of *A.*, and if not, immediately on her death or making any charge." And if there should be two or more such children, then the stock to be transferred amongst such children, in equal shares, at the age of twenty-one, if *A.* should be dead; but if not, then immediately after her decease or having made such incumbrance. The deed contained clauses of survivorship in case of any child dying under twenty-one, as to "the share intended to be thereby provided for such child dying," and also clauses for maintenance, advancement, and accruer. There were several children; one attained twenty-one, and died in the life of *A.* Held, that her representatives did not participate in the fund. *Skipper* v. *King.* vol. 12, p. 29

13 Residuary personal estate was bequeathed in trust for all the sons and daughters of *A.* and *B.* (who were living), the shares to be vested at twenty-one, though "not payable or transmissible" until the deaths of *A.* and *B.* The will contained powers of maintenance. Held, that the sons and daughters, on attaining twenty-one, acquired vested interests, subject to the rights of future-born children, and that after attaining twenty-one, they were entitled in the life of *A.* and *B.*, to payment of their shares of the income, though not of the capital. *Ellis* v. *Maxwell.* vol. 12, p. 104

14. Construction of a bequest in the form of a direction to "pay, apply and divide" amongst children "when and as" they should severally attain twenty-six. *Harrison* v. *Grimwood.* vol. 12, p. 192

15. A testator directed his trustees to pay and apply the interest of his residuary estate to his daughter for life, for the support of herself and issue; and, after her decease, to "pay, apply and divide the principal" amongst all her children, "when and as" they should attain twenty-six. There was a trust for maintenance during minority, and a power of advancement not so restricted. Held, that the children took immediate vested interests, and that the gift was not too remote. *Ibid.*

16 Construction of a gift over upon death before becoming entitled to payment. *In re Williams.* vol. 12, p. 317

17. Personalty was given to parents for life, with remainder to all their children equally, the shares to be paid at twenty-one or marriage, unless in the lifetime of the parents, in which case, payment was to be made on the death of the survivor. There was a gift over on the death of a child before becoming entitled to payment. A child attained twenty-one, but died in the lifetime of her parents. Held, that the gift over did not take effect. *Ibid.*

18. Bequest to *H. S.* for life, and after her decease, to the testator's four brothers and sister, "or such of them as should be then living" equally. And in case any of them should be then dead, then he bequeathed the deceased child's share to the children, "to be paid at the time before mentioned." The brothers and sister all died in the lifetime of *H. S.*, one (*A. B.*) having had no children. Held, that the representatives of *A. B.* were entitled to his share, and that all the children took, whether living at the death of *H. S.* or not. *Masters* v. *Scales.* vol. 13, p. 60

19. Gift by will of freeholds and leaseholds to *A. durante viduitate*, and then to *B.* absolutely, with a gift over to *B.*'s brother and sister, "if he should die and leaving no children." *B.* survived *A.* Held, that he then took an absolute vested interest, not liable to be divested on his subsequent death without children, and that, therefore, the gift over, in that event, failed. *Edwards* v. *Edwards.* vol. 15, p. 357

20. Construction of gifts in the following form: 1st, to *A.*, and if he shall die, to *B.*; 2nd, to *A.*, and if he shall die without children, to *B.*; 3rd, to *X.* for life, with remainder to *A.*, and if he shall die, to *B.*; and 4th, to *X.* for life, with remainder to *A.*, and if he shall die without leaving children, to *B.* In the first case, the contingency has reference to the death of the testator; in the second, to the death of *A.*; in the third and fourth, to the death of the tenant for life. *Ibid.*

21. A testatrix, who died in 1819, bequeathed a legacy to accumulate in trust for the eldest daughter of *A. B.*, to be paid at twenty-one, and if none, to the eldest daughter of *C. D.*, payable in like manner. *A. B.* never had a daughter, and died in 1851. *C. D.* had a daughter *G.* born in 1821, and who died in 1827, and other daughters. Held, that the representative of *G.* was entitled to the legacy, and to the accumulations accrued down to 1827, together with simple interest thereon from that time to the day of payment in 1852. *Bryan* v. *Collins.* vol. 16, p. 14

22. Devise and bequest of real and personal estate to trustees for *A.* for life, and afterwards "to convey and assure" equally between all *A.*'s children, on their respectively attaining twenty-one, with a gift over on *A.*'s death without "leaving any child." There was one child who survived *A.*, and died an infant. Held, that such child did not take

a vested interest; and secondly, that the gift over did not take effect. *Walker* v. *Mower*. vol. 16, p. 365

23. Bequest of leaseholds, upon trust to assign unto all the children of *A. B.* on their respectively attaining twenty-one, and if one child, to assign to such child (omitting on attaining twenty-one). An only child, who died an infant, was held to take a vested interest *Ibid.*

24. Real and personal estate were given upon trust during the life of *A.*, out of the income to pay *A.* 200*l.* a year, and one-third of the residue to *B.*; and on the death of *A.*, to sell and pay one-third to *B.*; then a gift over on the death of *B.*, before his share should "become due and payable." *B.* died in the life of *A.* Held, that the gift over took effect. *Creswick* v. *Gaskell.* vol. 16, p. 577

25. A testator devised property to trustees, for the maintenance of his four children until they severally attained twenty-five, at which time he devised "unto such of his said children as should attain that age" one-fifth of the property to hold to them and their heirs. There was a gift over to the "survivors or survivor" if any died before attaining twenty-five and left no issue, or if they should die after attaining twenty-five, and should leave no lawful issue. Held, first, that their interests did not vest until twenty-five; and secondly, that the words "survivors or survivor" was not to be read "other or others." *Stead* v. *Platt.* vol. 18, p. 50

26. Gift over, after an absolute bequest in the event of death without leaving issue surviving, construed, upon the context, such a death under twenty-one. *Brotherton* v. *Bury.* vol. 18, p. 65

27. The testator gave an estate to *A.*, "to become his property on attaining the age of twenty-five years." Held, that the estate was vested, subject to be divested in case of *A.*'s death before he attained twenty-five. *Attwater* v. *Attwater.* vol. 18, p. 330

28. By a marriage settlement, after the death of the husband and wife, the trustees were to pay, assign and transfer the capital to the children of the wife equally, the shares to be paid at twenty-one. There was a subsequent proviso, that if there should be no such child living at the decease of the survivor of the parents, then the fund was to go over to *S. C.* There was only one child of the marriage. Held, that though she had attained twenty-one, her interest was defeasible on her death before the survivor of her parents. Held, also, that the settlement could not, on the evidence, be reformed. *Lloyd* v. *Cocker.* vol. 19, p. 140

29. A testatrix devised a farm in trust for *E. K.* for life, and "declared that if *E. K.* should marry," then she gave the farm to *J. W.* for life, &c.; *E. K.* did not marry. Held, that the gift to *J. W.* &c. was vested independent of *E. K.*'s marrying again. *Meeds* v. *Wood.* vol. 19, p. 215

30. A testator bequeathed a pecuniary legacy in trust for his sister for life, and after her decease, to pay it to her children, equally, to be paid at twenty-one, with benefit of survivorship in case of death under twenty-one, with a clause for maintenance. There was a gift over to other parties, in case there should be no child living at the death of the sister, such parties to take in the same manner "as is hereinbefore directed, had any or either of the children of my sister survived so as to have become entitled thereto." There were three children, one of whom only survived the sister. Held, that such child took the whole fund. *Daniel* v. *Gosset.* vol. 19, p. 478

31. A testator gave a fund to his wife for life, with a power to her to appoint it by will amongst "*A.*, *B.* and *C.*, and their respective children," and in default of appointment, he directed "the same, at his wife's death, to go amongst all the said children equally." The wife made no appointment. Held, first, that the children alone took, to the exclusion of their parents; secondly, that they took *per capita*; and thirdly, that the fund vested in the children living at the death of the testator, subject to its being either divested by the exercise of the power or by the birth of other children before the death of the tenant for life. *Pattison* v. *Pattison.* vol. 19, p. 638

32. A testator gave a legacy to trustees for the maintenance of *A.* and *B.* during their minority, "and when and so soon as the youngest child should have been born twenty-one years," to "pay and divide" it between them, if they should then both be living. But if either of them should be then dead, then he gave his moiety over to other persons. They both died before the youngest would, if living, have attained twenty-one, but *A.*, the eldest, had attained that age. Held, that *A.* took a vested interest, and that his representatives were entitled to a moiety. *In re Smith's Will.* vol. 20, p. 197

33. Bequest of residue to *A.* for life, and after her decease, a gift of 3,000*l.* each to *B.* and *C.* (granddaughters), for their absolute use; and if either of them should be dead at the decease of *A.*, her 3,000*l.* was to go to the granddaughter who should be then living; but in case such granddaughter should have left children, they were to take her legacy. *B.* died first, leaving children; *C.* then died without issue, leaving *A.* surviving. On the death of *A.*: Held, that *C.*'s legacy

was vested and passed to her representatives. *In re Bright's Trusts.* vol. 21, p. 67

34. A testator directed a reversionary sum to fall into his residue. He gave an annuity to *A.* for life, and his residue to a class of children who should attain twenty-one. The only residue was the reversionary sum and the fund set apart to answer the annuity. On the death of *A.*, held, that children born in the life of *A.*, but after one of the class had attained twenty-one, were excluded, and did not participate in the fund then distributable. *Hagger* v. *Payne.* vol. 23, p. 474

35. Where a residue, consisting partly of reversionary property, is given directly to a class, the class is to be ascertained at once, and not from time to time as the reversions fall into possession and become distributable. *Ibid.*

36. A testator devised his real and personal estate in trust for his wife for life, and after her decease, he devised a real estate to his brother for life, with remainder to his children. He proceeded thus:—and as to the residue of my estate and effects "not hereinbefore disposed of, or which may remain after satisfying the trusts of this my will," I give the same to my brother (if then living), his heirs, &c. "But in case my brother shall then be dead, then and in such case I give" the residue of my estate and effects to his children. The brother died in the life of the widow. Held, that the residue vested in him at the testator's death. *Birds* v. *Askey.* (No. 1.) vol. 24, p. 615

37. Bequest of residuary personal estate in trust for testator's wife for life, and on her death to pay, &c. to his son *C. A.* on his attaining twenty-one. But if he should depart this life before the wife "or" before attaining twenty-one, then in trust for the Defendants. Maintenance to, and a power to advance *C. A.* were also given. *C. A.* attained twenty-one, but died in the wife's lifetime. Held, that "or" was to be read "and," and that the son took an absolute vested interest on attaining twenty-one. *Bentley* v. *Mesch.* vol. 25, p. 197

38. A testator bequeathed his residue to his wife for life, and at her decease "to be equally divided between his two daughters, *B.* and *C.*," and in case of marriage to be settled on themselves. The tenant for life was still living, and *B.* had never been married. Held, that *B.* took an absolute vested interest on the death of the testator. *Smith* v. *Colman.* vol. 25, p. 216

39. Under a trust for *A.* for life, "and after her decease to be divided equally between her younger children." Held, that the children took vested interests at their births. *Adams* v. *Robarts.* vol. 25, p. 658

40. Distinction in regard to vesting, between a direction to "divide amongst a class at once," and such a direction after a tenancy for life. *Adams* v. *Robarts.* vol. 25, p. 658

41. Under a will, the shares of children became absolutely vested at twenty-one, but the fund was not divisible until the death or second marriage of the widow. The will directed that in case of the death of any of the children leaving lawful issue surviving, the share of the parent should go to the children of such parent. Held, that the gift over to the grandchildren had reference to the period of division, and not to the period of the vesting of the children's shares, and that it then ceased to operate. *Beckton* v. *Barton.* vol. 27, p. 99

42. Bequest of 4,000*l.* to *A.* for life, and afterwards, if she shall "leave" any children, upon trust to divide it equally amongst all "such children," to be payable and become vested interests at twenty-one, and in case there shall be only one "such child" who shall attain twenty-one, then to pay it unto such only child. There was a power of maintenance during minority, and also of advancement, not exceeding "such presumptive share," and a gift over, if the daughter should "have" no child who should arrive at twenty-one. Held, by the Master of the Rolls and Lords Justices on appeal, that a daughter of *A.*, who attained twenty-one and married, but died in the life of *A.*, took no share. *Sheffield* v. *Kennett.* vol. 27, p. 207

43. A fund was settled on trust for the wife for life, and in case she should leave any issue living at her death, for the husband for life, and after his decease, upon trust to divide it amongst the children of the marriage "that should be *then* living on their respectively attaining the age of twenty-one years." And in case there should be no child, or of their all dying in the wife's life, to pay the fund to such person as the wife should by will appoint, and in default to the executors or administrators of the husband and wife, or the survivor of them. And in case the wife should survive her husband without leaving issue then living, to pay the fund to the wife. The wife died leaving children who had attained twenty-one, and the husband was still living. Held, that the limitation to the children remained contingent until the death of their father. *In re Wollaston's Settlement.* vol. 27, p. 642

44. Money was settled upon trust, after the death of the survivor of the parents, to pay, &c. unto all the sons and daughters, and the children of such as should be dead leaving issue (the children to take the share of their parents), with a gift over if there should be no child of the marriage, or being such, all sons, should

die under twenty-one, and the daughters under twenty-one or marriage. Held, that the shares vested in the children on their births, and that the representatives of those who died unmarried, in their infancy, and in the life of the parents, took a share. *Re Minor's Trusts.* vol. 28, p. 60

45. A testator devised freeholds and leaseholds on trust for his widow for life, with remainder to his niece for life, and afterwards on trust for all and every the niece's children, "the children to become beneficially interested on the death of their parent." Held, by the Master of the Rolls and by the Lord Chancellor on appeal, that the children took vested interests at their births. *M'Lachlan* v. *Taitt.* vol. 28, p. 407

46. Bequest of 2,000*l.* in trust for *A.* for life, and from and after her decease "to convey, transfer and assure" it unto all and every the child and children of *A.* Held, that *A.*'s children took vested interests at their births. *Ibid.*

47. By a marriage settlement, a fund was limited, after the death of the husband and wife, in trust to assign, &c. to all the children equally, or their respective executors, administrators or assigns, the shares of minors to be transferred at their age of twenty-one, with maintenance in the meanwhile. There was a gift over if there should be no child, or if they should all "happen to die before they became entitled to their respective shares." Held, that the shares of the children vested at their birth, and that the representatives of children, who died infants in the life of their parents, were entitled to participate. *Jopp* v. *Wood.* vol. 28, p. 53

48. A gift over, after a tenancy for life, on death "without becoming entitled to the receipt of the trust moneys" construed "without attaining a vested interest." *Hayward* v. *James.* vol. 28, p. 523

49. Bequest to a daughter for life, and after her decease in trust for her children equally, to be "paid" at twenty-one, with benefit of survivorship, if any should die before his share should become "payable," with a gift over in case the daughter should die without issue, or being issue, they should all die "without becoming entitled to the receipt of" the trust moneys. One child only attained twenty-one, and died before the daughter. Held, that the representatives of such child were entitled, and that the gift over did not take effect. *Ibid.*

50. A testator devised his real estate to trustees, on trust to apply the rents towards the maintenance, &c. of his children until the youngest attained twenty-one, then upon trust to sell, and "pay, share and divide" the moneys between his children in manner following:—One-fifth to *William*, one-fifth to *Thomas*, one-fifth to *Sarah*, and two-fifths to *John*. *Sarah* died an infant. Held, that her share was vested and passed to her representatives. *Cooper* v. *Cooper.* vol. 29, p. 229

51. A testator gave his residuary real and personal estate to his daughter for life, and afterwards he directed his trustees to "pay, transfer and divide" his residuary estate between his children, and to (by substitution) the issue of such as should have died in his lifetime leaving issue at his decease. He subsequently authorized his trustees, in their discretion, if they should think fit, to pay the male issue their shares at any time between attaining twenty-one and thirty, with power of maintenance and advancement in the meanwhile; but he directed that the shares of female issue should be "vested" at twenty-one. Held, that the shares of the issue vested on the death of the daughter. *Barnet* v. *Barnet.* vol. 29, p. 239

52. A testator gave his daughter a life annuity of 50*l.*, and from and immediately after her death he bequeathed 1,000*l.* unto her children, share and share alike, payable twelve months after the daughter's death. This was payable exclusively out of the testator's real estate. Held, that those children alone of the daughter who survived her participated in the 1,000*l.* *Re Cartledge.* vol. 29, p. 583

53. A testator bequeathed leaseholds in trust for his wife for life, and, after her decease, to apply the rents for the maintenance and education of all his children living at his decease, and after all his said children should attain twenty-one, upon trust to sell and "pay and divide" amongst all his said children, and "if but one or but one surviving child," the whole to such child. Held, that all the children who survived the father took vested interests. *Boulton* v. *Pilcher.* vol. 29, p. 633

54. Devise, after the death of the tenant for life, in trust to sell, and "pay and divide" the produce amongst all his children, to be paid as and when they respectively attained twenty-one, and in the meantime the interest to be applied in their maintenance, with a gift over, in case the tenant for life died without leaving any child. Held, that the interests of the children vested at their births. *Shrimpton* v. *Shrimpton.* vol. 31, p. 425

55. In a gift over on the death of *A.* before the estate became vested in him, the word "vested" held to mean vested in interest and not vested in possession. *Re Richard Arnold's Estate.* vol. 33, p. 163

56. A testator devised his real and personal estate to trustees to sell and invest and to pay the interest to his wife, to be applied in support of herself and her children until they should respectively attain twenty-one, and upon their severally attaining twenty-one to divide the capital between his wife and children. Held, that a child who died under twenty-one had attained a vested interest. *Bird* v. *Maybury*. vol. 33, p. 351

57. A testator bequeathed his residue to his children, in terms which gave them a vested interest, subject to be divested in favour of their children on their death under twenty-one. He then provided, that if it should happen that he should leave no such children or child living to attain twenty-one, "or such, if any, dying without leaving lawful issue," then over. Held, that "the dying" referred to was dying under twenty-one, and that the testator's children, on attaining twenty-one, acquired an indefeasible interest. *Pearman* v. *Pearman*. vol. 33, p. 394

58. Gift "to pay and divide" residue amongst children "as and when" they attained twenty-one, with a maintenance clause not coextensive with minority, held vested. *Ibid.*

59. A testator who was entitled to a reversion expectant on the death of *A.* and *B.* without issue living at their death, devised it in trust to sell and divide the produce between his six daughters, or such of them as should be then living, and the children of such of them as should be dead, the children taking their parents' share. But if only one daughter survived *A.* and *B.* she was to take the whole, and the heir-at-law was to take if no daughter or child of a daughter should be living at the death of *A.* and *B.* Held, that the shares of the children of the daughters vested, not at their mother's death, but at the death of the survivor of *A.* and *B.* *Lewis* v. *Templer*. vol. 33, p. 625

60. When clauses in a settlement are conflicting, the rational presumption is that a child attaining twenty-one takes a vested interest. *Dixon* v. *Barkshire*. vol. 34, p. 531

61. In a settlement, the limitation was to the children "who should be living at the time of the decease of the father;" this was controlled by the gift over. Held, that a child who died in the life of her father, having attained twenty-one, was entitled to a share. *Ibid.*

VESTRY.

By a decree made in 1851, the trustees of a charity for poor inhabitants of a parish were to be elected by "the parishioners and inhabitants of the parish in vestry assembled." By public acts in 1855, 1856, the character of the vestry was altered, and it was made to consist of 120 occupiers of houses. Held, that the acts (18 & 19 *Vict.* c. 120, and 19 & 20 *Vict.* c. 112) controlled the decree, and that the present vestry had the right of electing the new trustees. *In re Hayle's Estate*. vol. 31, p. 139

VISITOR.

[*See* CHARITY.]

1. An information, alleging an abuse in the internal regulations of a charity dismissed, on the ground that they were the proper subject for the interference of the special visitor. *The Attorney-General* v. *Dulwich College*. vol. 4, p. 255

2. Upon an information for the reformation of alleged abuses in the management of a school established by the founder of *Magdalen College*, in connection with it: Held, that the Court had not jurisdiction to give the relief asked; that though there was sufficient proof of the duty or obligation, there was no evidence of a trust, as the word is understood in this Court, and that the proper remedy was through the visitor. *The Attorney-General* v. *Magdalen College, Oxford*. vol. 10, p. 402

3. In practice, the office of visitor of a charity has become merely nominal, its duties and functions being rarely spontaneously performed. *Attorney-General* v. *St. Cross Hospital*. vol. 17, p. 435

4. In cases of charitable trusts, the Court has authority to see them properly performed, notwithstanding there may be a special or general visitor. *Ibid.*

5. A free grammar-school was founded and endowed by King *Edward* the Sixth, by letters-patent (1550), for the education, teaching and instruction of boys and young men in grammar; the direction and management was thereby committed to the governors, who were empowered, with the advice of the bishop of the diocese, to make statutes and ordinances for that purpose. Held, that this was a Church of *England* school properly so called. *Attorney-General* v. *The Governors, &c. of the Sherborne Grammar-School*. vol. 18, p. 256

6. The governors, with the approbation of the bishop, having made ordinances, which rendered compulsory the use of certain prayers in the school, attendance at divine service in the parish church, and the receiving by the scholars of religious instruction in the doctrines of the Church of *England*, and confined the exhibitions to such scholars as were proceeding to the universities of *Oxford* and

Cambridge. Held, that these ordinances were within the scope and authority of the governors and bishop, and were no violation of the original instrument of foundation. Held also, that such matters related to the internal management of the school, and were therefore the subject of visitatorial jurisdiction exclusively. *Attorney-General* v. *The Governors, &c. of the Sherborne Grammar-School.* vol. 18, p. 256

7. In 1723 a petition was presented to the Lord Chancellor, as visitor, by certain dissenters, complaining of the compulsory attendance at church, and praying for exemption to their children, and that they might have the benefits of the school; and an order was made giving the master a discretion to exempt from such attendance the child of any parent who applied, but it never was acted on, and the ordinances afterwards made did not recognize it. *Semble*, that the only jurisdiction which the Court of Chancery has, is to see that order properly enforced, in the spirit in which it was made, as in the case of a breach of trust. *Ibid.*
8. In charity cases, where there is a visitor, this Court will not interfere with the visitatorial power, as to internal regulations and management, unless there be a breach of trust. *The Attorney-General* v. *The Governors of the Free Grammar-School of Queen Elizabeth in Dedham.* vol. 23, p. 350
9. Where the Crown is the founder, the King is the visitor, and the Court does not interfere as to the internal regulations and management; but where the charity is founded by a private individual, and no visitor is appointed, and the Crown, by royal charter, has incorporated the governors, and authorized them to make rules, this Court will interfere if the existing rules do not carry into effect the views and wishes of the founder; and, to further the founder's intention, it directs a scheme, rendered necessary by the altered state of circumstances, and the progress of civilization. *Ibid.*
10. The French Protestant Church in *London* was founded in 1550 by letters patent of the Crown. The pastor, when elected, was presented to and approved and instituted by the Crown. The governing body had, apart from the charter of incorporation, funds impressed with a trust in favour of the pastor. The governing body dismissed the pastor. Held, that this Court, notwithstanding the rights of the Crown as visitor, had jurisdiction to see to the performance of the trust, and to determine on the validity of the dismissal, and the Court, having come to the conclusion that it was not justifiable, granted an injunction to restrain the governing body from hindering the pastor in the exercise of his office. *Daugars* v. *Rivas.* vol. 28, p. 233
11. A visitor visits the corporation with respect to corporate matters, but that circumstance does not remove from this Court the jurisdiction or obligation to exercise its functions of inquiring whether the duties, so far as there is a trust to perform, have been properly exercised. *Ibid.*

VOLUNTARY CONVEYANCE.

[*See* FRAUDULENT CONVEYANCE, TRUST (CREATION OF).]

1. A husband transferred money in the funds into the joint names of himself and wife, for the purpose of making a provision for her; and by his will he bequeathed to his wife a life interest in "all his property that he was in possession of." Held, that the stock did not pass. *Low* v. *Carter.* vol. 1, p. 426
2. *A. B.* gave directions to his bankers to invest a sum of money in the joint names of himself and wife, and their brokers accordingly made the purchase: *A. B.* died after the contract, but before the transfer had been completed. Held, that the wife was entitled to the stock by survivorship. *Vance* v. *Vance.* vol. 1, p. 605
3. *A. B.* voluntarily assigned to trustees bonds and promissory notes amounting to 600*l.*, in trust for himself and his wife and children, and he handed over the securities. The trustee gave no notice to the debtors. *A. B.* received 200*l.*, part of the 600*l.* (the securities having been returned to him by the trustees), and the remainder was lost by the insolvency of the debtors. *A. B.* invested the 200*l.* with other moneys of his own on freeholds, and by writing acknowledged the 200*l.* to be trust property. He afterwards deposited the title-deeds with the trustees as a security for the whole 600*l.* Held, that the equitable mortgage was valid to the extent of 200*l.* but no further. *James* v. *Bydder.* vol. 4, p. 600
4. A testatrix gave her personal estate to *B.* for the benefit of *B.*'s daughters. *B.* invested the produce, together with 1,000*l.* of his own moneys, in the funds in his own name, and afterwards treated and admitted the aggregate fund as held in trust for his daughters. On the death of *B.*, the fund was found mixed with like funds of his own. Held, that under the circumstances, there was sufficient to constitute a trust of the 1,000*l.* in favour of the daughters. *Thorpe* v. *Owen.* vol. 5, p. 224
5. A voluntary covenant is sufficient to

support a creditor's suit against the representatives of the covenantor. *Watson* v. *Parker*. vol. 6, p. 283

6. A trustee under a voluntary settlement of chattels, policy of assurance and mortgage, filed a bill against the representatives of the settlor for the recovery thereof. Held, that if the property was legally vested in the Plaintiff, he might recover it at law and apply it on the trusts; but if otherwise, then, as the deed was voluntary, the Court could afford the Plaintiff no assistance in recovering it. In the case of an imperfect voluntary deed, neither the assignor nor his executor can be compelled to permit the assignee to use his name for the recovery of the debt. *Ward* v. *Audland*. vol. 8, p. 201

7. Held, that neither a voluntary assignment by deed of a mortgage debt, accompanied by a grant, not specifying the particular estate, but of all estates held in mortgage, and by a covenant for further assurance and without delivery of the mortgage deed or notice to the mortgagor, nor the voluntary assignment of a policy of assurance retained in the hands of the assignor, and without notice given to the grantor, though accompanied by a covenant for further assurance, can be considered as a complete and effectual assignment, to be acted upon and enforced by the assignee, without any further or other act to be done by the assignor. *Ibid.*

8. A deed poll in the form of a power of attorney, held, in equity, to amount to an assignment, or to a covenant to assign. *Bennett* v. *Cooper*. vol. 9, p. 252

9. In 1832 Sir *R. R.* transferred 2,197*l.* stock into the names of trustees, and executed a voluntary deed, declaring the trusts in favour of his daughter and her children. In 1840 he executed a second deed, which, without noticing the first deed, recited that he had transferred a sum of 2,197*l.* stock into the names of these trustees, and proceeded to declare trusts somewhat different, and gave a life interest to his wife. Held, first, that the stock intended to be settled by the two deeds was the same; secondly, that the trusts of the first deed could not be altered by the second; and thirdly, that the second deed, failing to operate, gave no right against the assets of the settlor. *Newton* v. *Askew*. vol. 11, p. 145

10. *A. B.*, after depositing in his own name in a savings bank to the full extent allowed, made further deposits to another account in the name of himself and sister, but nominally as trustee for her. By the terms of the act of parliament he retained a control over the fund. Held, that the sister was not entitled, the Court thinking that the object was to evade the act, and not to create a trust in favour of the sister. *Field* v. *Lonsdale*. vol. 13, p. 78

11. *A.* being seised in fee, executed a deed poll, whereby he voluntarily granted it to his wife as her sole and absolute property for ever. Held, that this was an imperfect voluntary gift: that the relation of trustee and *cestui que trust* had not thereby been created, and that a Court of Equity would not interfere to assist either party. *Price* v. *Price*. vol. 14, p. 598

12. The Court in order to give effect to voluntary settlements, requires, where the settlor is the legal owner, everything to have been done which is requisite to transfer the legal ownership; and where he is the equitable owner, clear and distinct evidence of a declaration of trust in favour of the donee. *Bentley* v. *Mackay*. vol. 15, p. 12

13. A father being entitled, during the life of his son, to the dividends on funds standing in the names of himself and three other trustees, directed two of the trustees to pay over the dividends for the future to his son. They acted on the direction, and the testator afterwards recognized the gift. Held that there was a valid and effectual voluntary settlement which this Court would give effect to. *Ibid.*

14. A voluntary conveyance by a married woman is within the statute against fraudulent conveyances (27 *Elizabeth*, c. 4). *Butterfield* v. *Heath*. vol. 15, p. 408

15. Husband and wife executed a post-nuptial settlement of the wife's estate in favour of themselves and their children. Held, that it was void as against a subsequent purchaser from them for valuable consideration. *Ibid.*

16. *A.* mortgaged his own estate for 5,000*l.* for the benefit of *B.*, and *B.* (pursuant to an agreement to that effect with *A.*) conveyed his estate, not only as an indemnity to *A.*, but also to uses for the benefit of his own (*B.*'s) children and their issue. Held, that there was a sufficient valuable consideration as between *A.* and *B.* to support the limitations to *B.*'s children, as against subsequent purchasers for valuable consideration from *B.* Held also, that this Court would have specifically enforced the whole agreement at the suit of *A.* *Ford* v. *Stuart*. vol. 15, p. 493

17. It is fully settled, that a contract cannot be specifically performed in part. It must be wholly performed or not at all. *Ibid.*

18. A gift may be made by a husband to his wife, which, though bad in law, will be supported in equity. Though the property does not pass at law, yet, in equity, a husband, being the legal owner, may become a trustee for his wife, and if

by clear and irrevocable acts he has made himself a trustee, the gift to his wife will be conclusive. *Mews* v. *Mews*. vol. 15, p. 529

19. To constitute a gift between husband and wife, there must either be a clear irrevocable gift to a trustee for the wife, or some clear and distinct act of the husband, by which he divested himself of his property, and engaged to hold it as a trustee for the separate use of his wife. If a man were to deposit money with bankers, directing them to hold it for his wife, that would probably be sufficient. *Ibid.*

20. Doctrine of the Court as to voluntary and incomplete settlements. *Bridge* v. *Bridge*. vol. 16, p. 315

21. Where a donor creates a legal debt in favour of a volunteer, and the trustee declines to act, this Court will enforce payment of the debt for the benefit of the volunteer. *Ibid.*

22. If the legal owner of stock execute a declaration of trust in favour of a volunteer, equity will compel the execution of the trust; but if he merely assigns the stock and makes no transfer, the Court will afford him no assistance. *Ibid.*

23. If the beneficial owner of stock standing in the name of trustees, assign it in favour of a volunteer, and notice is given to the trustees, who act upon it, equity will enforce the performance of the trust in favour of the volunteer. *Ibid.*

24. When the owner of property, vested in *A.* and *B.* as trustees, purported to assign it to himself and others, in trust for volunteers, but no legal transfer was made, or recognition of the trust by *A.* and *B.*: Held, that the relation of trustee and *cestui que trust* had not been created in favour of such volunteers. *Ibid.*

25. Voluntary settlement of an equitable interest in real estate held ineffectual, the legal estate not having passed to the trustees thereof. *Ibid.*

26. The Plaintiff being entitled to shares in companies, foreign bonds, Consols, cash and real estate, which were vested in the trustees of his uncle's will, executed a voluntary deed, whereby he granted the realty to *A.* and *B.*, to the use of himself and *A.* and *B.*, upon trust to sell, and he directed that the produce and the bonds, &c., should thenceforth be considered vested in him and *A.* and *B.* on certain trusts for volunteers. Held, that the deed was valid as to the shares and bonds, which had been transferred to the Plaintiff and *A.* and *B.*, but ineffectual as to foreign bonds, stock and cash, of which there had been no transfer, and no acceptance of the trust by the trustees of the uncle's will, in whom they were vested, and as to the real estate, the legal estate not having passed. *Ibid.*

27. A post-nuptial settlement of a wife's estate, whereby it is limited to the wife for her separate use for life, without power of anticipation, with remainder to the husband for life, with remainder to the children, &c., is not void as against a subsequent purchaser from the husband and wife, as a voluntary settlement under the 27 *Eliz.* The modification, by the husband, of his life estate in possession, and by the wife, of her inheritance, form a good and valuable consideration. *Hewison* v. *Negus*. vol. 16, p. 594

28. This Court will not assist a volunteer by making effectual an incomplete gift. *Weale* v. *Ollive*. vol. 17, p. 252

29. *A. B.* directed the certificates of some United States Bank shares standing in his name to be delivered to his nephew, and in a letter to him stated, that "he made a free gift of them" to him. *A. B.* also executed a power for transferring the shares, but which was not acted on in *A. B.*'s life. The shares, being found in *A. B.*'s name at his death, were held to form part of his personal estate. *Ibid.*

30. This Court will not enforce the transfer of stock in favour of a volunteer to whom it has been merely assigned. *Beech* v. *Keep*. vol. 18, p. 285

31. Some Consols belonging beneficially to *A.* for life, with remainder to *B.*, stood in the names of two trustees, of the survivor of whom *B.* was the representative. *B.* voluntarily assigned the stock to *A.*, but no transfer was made. The Court refused either to declare *B.* a trustee of the stock for *A.* or to compel her to transfer it. *Ibid.*

32. The distinction between an assignment for the benefit of a volunteer, and a declaration of trust in his favour, though very thin, yet pervades the cases. *Ibid.*

33. By a voluntary settlement, the settlor assigned a mortgage, and purported to convey copyholds; he also covenanted for quiet enjoyment and for further assurance. He died without having surrendered the copyholds. Held, that this Court would not render its assistance to compel the voluntary settlement to be perfected. *Denning* v. *Ware*. vol. 22, p. 285

34. It has long been settled, that the trustees and *cestuis que trusts* under a voluntary settlement cannot compel the settlor to perform any further act, than he has already done, to render such a settlement operative. *Ibid.*

35. Bill by purchaser against the vendor, who had previously executed a voluntary settlement of the property, and against the trustees and *cestuis que trusts* under the settlement to have the settlement declared void and delivered up, and for a specific performance, sustained, the only

objection to the title being the voluntary settlement. *Daking* v. *Whimper*. vol. 26, p. 568

36. Effect given to a voluntary assignment of a policy of assurance containing an irrevocable power of attorney. *Pearson* v. *The Amicable Assurance Office and Others*. vol. 27, p. 229

37. *A. B.* was entitled to 5,000*l.* charged on a freehold. It was secured by the legal estate vested in her, but no one was personally liable to pay it. *A. B.* executed a voluntary settlement, by which she assigned the money to trustees, and gave them a power of attorney to recover it: but she retained the legal estate. Held, that as the money could only be recovered upon a reconveyance of the legal estate to the owner, which the trustees were unable to procure, the voluntary settlement was incomplete and could not be enforced against the settlor or her estate. *Woodford* v. *Charnley*. vol. 28, p. 96

38. Upon a voluntary covenant to surrender copyholds, and in the meanwhile to stand possessed of them for trustees for the volunteers, though the covenant to surrender *per se* cannot be enforced, yet a valid trust is constituted for the volunteers. *Steele* v. *Waller*. vol. 28, p. 466

39. *A. B.* voluntarily covenanted to surrender copyholds on trusts for his children. Held, that equity would not compel any act to be done for the purpose of carrying the covenant into effect. *Tatham* v. *Vernon*. vol. 29, p. 604

40. A settlement on his family by a person *in extremis*, and not containing a power of revocation, set aside, the Court being of opinion that it was executed in expectation of his immediate death, but not with the intention that it should be operative in case of his recovery. As to the duty of a solicitor to introduce a power of revocation into an instrument executed under such circumstances. *Forshaw* v. *Welsby*. vol. 30, p. 243

41. Whether a deed executed without fraud, making a provision for volunteers, and on the faith of which they have acted for years, can afterwards be set aside or varied on the ground of mistake. *Bentley* v. *Mackay*. vol. 31, p. 143

42. Where *A.* agrees to make a provision for a volunteer, in consideration of *B.*'s doing the like, the contract is not voluntary. *Ibid.*

43. *A. B.* voluntarily assigned a policy on his life to trustees for his infant son, if he attained twenty-five; but if he died under that age, and *A. B.* should think proper to keep up the policy, upon trust for *C. D.* *A. B.* covenanted to pay the premiums during the life of his son only, and in the event of *A. B.* ceasing to pay the premiums, he should be at liberty to sell the policy and retain the money. The son died under twenty-five, and *A. B.* mortgaged the policy, covenanting to pay the premiums, which he did. Held, on the death of *A. B.* that the produce of the policy belonged to the mortgagees, and not to *C. D.* *Pedder* v. *Mosely*. vol. 31, p. 159

44. Parol declaration of trust of money handed over to a third party, on trust, by a person *in extremis*, supported, but held invalid as to stock, for which a power of attorney had been given by the settlor, but which had not been acted on at her death. *Peckham* v. *Taylor*. vol. 31, p. 250

45. A voluntary settlement, made by a sister on her brother and his family, subject to a limitation to her for life, with remainder to her issue, set aside, on the ground that the brother, on whom the burden was cast, had not proved the necessary requisites to support it. *Sharp* v. *Leach*. vol. 31, p. 491

46. The law of this Court is very strict on the subject of voluntary deeds, and gives no assistance to the completion of them; but, at the same time, it does not lay down, as a rule, that they are always void; and the mere alteration of intention is not sufficient to induce this Court to interfere and cancel an instrument which was fully understood and deliberately executed by the grantor. *Toker* v. *Toker*. vol. 31, p. 629

47. *A. B.* executed a voluntary settlement of real estate to uses in favour of his four children, and he covenanted that the estate should remain to those uses and for quiet enjoyment. *A. B.* afterwards mortgaged the settled estate with his own unsettled estates, and died. Held, that the children were entitled to throw the mortgages on the unsettled estate, and as against legatees, to prove under the covenants against the settlor's assets for the damage they had sustained by the mortgage. *Hales* v. *Cox*. vol. 32, p. 118

48. A voluntary deed, though retained by the grantor until his death, held valid. *Bonfield* v. *Hassell*. vol. 32, p. 217

49. Voluntary deed set aside after the deaths both of donor and donee. *Phillipson* v. *Kerry*. vol. 32, p. 628

50. *A. B.* by deed voluntarily settled some property on trust for himself for life, and after his decease, upon trust to pay all the debts then owing by him, and any legacies or sums of money not exceeding 400*l.* which he by will or writing should direct, and subject thereto, in trust for his son *William*. Afterwards, in order to defeat the settlement, he gave voluntary bonds to the extent of 3,500*l.* in favour of other relatives. Held, that the bonds were effectual and created valid debts,

payable out of the trust property. *Markwell* v. *Markwell; Markwell* v. *Bull.* vol. 34, p. 12

51. Gifts of chattels by a husband to his wife supported. *Grant* v. *Grant.* vol. 34, p. 623

52. A husband may constitute himself a trustee for his wife; the declaration need not be in writing, but the words must be clear, unequivocal and irrevocable. *Ibid.*

53. The principle of this Court, established by a great number of cases is, that it will not interfere between volunteers (in the legal sense of the term), but will leave them to their remedy at law, whatever that may be. The Court will neither, at the instance of the donor who repents his gift, cause the deed of gift to be delivered up, nor will it, at the instance of the donee, interfere to complete an imperfect deed of gift. *De Hoghton* v. *Money.* vol. 35, p. 98

54. A purchaser for value of real estate cannot come into the Court of Chancery to have a prior voluntary deed, void under the 27th *Eliz.* c. 5, delivered up to be cancelled. The Court, in such a case, leaves both parties to their legal rights and remedies. *Ibid.*

55. *A. B.* entered into a voluntary agreement as to a leasehold with *C. D.*, and he afterwards contracted to sell it to *E. F.* for valuable consideration. Held, that a suit by *E. F.* against *A. B.* and *C. D.*, to have the rights of the parties declared and the voluntary agreement cancelled, could not be maintained. *Ibid.*

56. The construction of and the rights and incidents under a voluntary deed, if *bonâ fide* and valid, are the same as of a deed for value. *Dickenson* v. *Burrell.* vol. 35, p. 257

57. A person voluntarily gave his promissory note to trustees for his natural child, and deposited with them the title-deeds for the purpose of carrying into effect his intention as to the promissory note. Held, that a valid trust had been created. *Arthur* v. *Clarkson.* vol. 35, p. 458

58. Distinction between enforcing the performance of a complete voluntary trust and enforcing the completion of an incomplete one. *Gee* v. *Liddell.* (No. 1.) vol. 35, p. 621

59. A testator bequeathed 2,000*l.* on certain trusts, and he empowered his executor, who was also his residuary legatee, to retain the amount in his hands uninvested, he paying interest thereon. After the testator's death, the executor, being satisfied that the testator intended to bequeath 3,000*l.*, and not 2,000*l.*, promised to make it up 3,000*l.*; he made no investment, but continued to pay interest on the 3,000*l.* to his death. Held, that there was a complete voluntary trust as to the additional 1,000*l.*, which this Court would enforce. *Gee* v. *Liddell.* (No. 1.) vol. 35, p. 621

60. A brother in *India*, at the recommendation of another brother in *England*, agreed to settle the proceeds of certain goods on his sisters; he remitted the goods to *England*, and they were sold. Held, that a valid trust was constituted and could not be recalled. *Mackintosh* v. *Stuart.* vol. 36, p. 21

WAIVER.

[*See* DELAY, ESTOPPEL, WAIVER OF IRREGULARITY, WAIVER OF REQUISITIONS.]

1. The Plaintiff's right to except to the Defendant's answer for insufficiency, is not waived by a motion for production of papers, founded on admissions in the answer.

It is unnecessary in such a case to move "without prejudice to the Plaintiff's right to except. *Lane* v. *Paul.* vol. 3, p. 66

2. Defendant in contempt for want of answer filed it, and the Plaintiff replied thereto. Held, that he had waived his remedy for the costs of the contempt. *Haynes* v. *Ball.* vol. 5, p. 140

3. Under a decree in a legatee's suit to take the usual accounts. *A. B.* went in and claimed the residue which the Master found him entitled to; but the residue was not then ascertained, and no order was made in respect of it. Held, that *A. B.* was not precluded from afterwards asking relief against the executor, in respect of an alleged breach of trust, in a suit of his own, he not having, in the first suit, been in a situation to investigate the accounts of the executor, or to claim the relief which he asked in the second. *Guidici* v. *Kinton.* vol. 6, p. 517

4. A plaintiff, though he had joined in a commission to take an answer, was allowed to issue an attachment for want of answer before the return of the commission. *Boschetti* v. *Power.* vol. 8, p. 180

5. In 1794 an act authorized the making of a public canal through lands, of which *A.* was the owner and *B.* his lessee, and, upon payment of the compensation, the land was to vest in the company. An arrangement was made in respect of compensation with *B.* but not with *A.* The canal was made "with the full consent and approbation of and in accordance with the wishes of *A.*," whose name was mentioned in the act, and it was enjoyed until the expiration of the lease in 1844. The representatives of *A.* then recovered at law the land taken for the canal. Held, in equity, that *A.* having thus sanctioned the formation of the canal, was not entitled to retake possession, but

only to a fair compensation, to be determined by the agricultural value of the land taken, as calculated in 1844, and not in 1794. Held, secondly, that persons who had bought *A.*'s property with notice of the conditions of sale as to the canal were equally bound by the same equity. Held, thirdly, that this Court might itself determine the amount of compensation. *The Duke of Beaufort* v. *Patrick.* vol. 17, p. 60

6. In a Crown lease, the lessee covenanted not to convert the premises into a shop or place of sale of any kind, without consent of the Commissioners of Woods and Forests. The trade of an engraver had been carried on in it, without consent or objection, but rent had afterwards been received. Held, that the forfeiture had been waived, and that the title was good. *Bridges* v. *Longman.* vol. 24, p. 27
7. Notwithstanding payment for twenty-three years, by a widow, of the interest on a void mortgage, created by her while *coverte*, it was held, that her representatives were not precluded from disputing its validity. *Blandy* v. *Kimber.* vol. 24, p, 148
8. A purchaser had taken possession, by his tenant and not under the contract, after an abstract had been delivered, and he had made no objection to the title till long after, when a suit was threatened, and he had promised payment of part of the purchase-money. Held, that by his conduct and on the correspondence, he had waived all objections to the title arising upon that abstract; but held, secondly, that he had not waived any objection not arising on the abstract. *Bowen* v. *Stenson.* vol. 24, p. 631
9. Acquiescence in one breach of covenant, not considered material, will not prevent the covenantee complaining of another breach which affects the value of his property. *Western* v. *Macdermot.* vol. 35, p. 243

WAIVER OF IRREGULARITY.

[*See* IRREGULARITY.]

1. A Defendant, after having appeared to an amended bill, obtained an order for the delivery out of Court of his papers to enable him to prepare his answer, and after the time for answering had expired applied to the Plaintiff for names of commissioners to join in taking his answer. Held, that he could not afterwards refer the bill for impertinence. *Beavan* v. *Waterhouse.* vol. 2, p. 58
2. Where in a proceeding before the Master the Defendant, by acquiescence or omission to object, permits the other party and the Master to proceed as if he did acquiesce, he comes too late if he does not come at the first opportunity to complain of the irregularity.

   On a reference to the Master of exceptions for impertinence, he enlarged the time for making his report three times, and on the 19th of *February* reported the answer insufficient; on the 4th of *March* the Defendant gave notice of motion to take the certificates off the file, on the ground of irregularity and of the Master's having power to enlarge the time only once: the Court held that, even assuming the Master's power to have been so limited, the Defendant came too late, he not having previously taken the objection. *Davis* v. *Franklin.* vol. 2, p. 369
3. By taking proceedings to expunge matter reported by the Master to be impertinent, a party adopts the report altogether, and cannot afterwards, unless by the special leave of the Court, take exceptions to the report as to passages reported pertinent. *Holmes* v. *The Corporation of Arundel.* vol. 3, p. 303
4. A supplemental bill was filed in which a deceased person was named as Co-Plaintiff, and as next friend of infant Plaintiffs, and in the title of the Plaintiff's interrogatories for the examination of witnesses, his name was mentioned as being still a party. Held, that a Defendant who had acquiesced and intituled his interrogatories in a similar manner, could not, after publication move to suppress the depositions. *Lincoln* v. *Wright.* vol. 4, p. 166
5. Taking an office copy of an answer is not a waiver of an irregularity therein. *Fry* v. *Mantell.* vol. 4, p. 485
6. A foreign sovereign prince, who was also an *English* peer, was made a Defendant to a suit, and served with a letter missive. The Lord Chancellor refused to recall it. The Defendant then appeared, and filed a demurrer for want of jurisdiction. Held, first, that the Lord Chancellor had not decided that the Defendant was liable to the jurisdiction of the Court; and secondly, that the Defendant had not, by appearing, waived any defence to the bill. *The Duke of Brunswick* v. *The King of Hanover.* vol. 6, p. 1
7. An irregular order for taxation may be waived, but it must be done in some clear and unequivocal manner. *In re Mackrill.* vol. 11, p. 42
8. On the 21st of *July* the Master proceeded *ex parte* in a taxation in the absence of the client, who had not been served with a warrant to proceed on that day. A warrant was afterwards regularly served for the 31st of *July*, subscribed "to complete the taxation." The client did not attend; but the Master being informed of the former irregularity, retaxed so much of the bills as had been taxed

on the 21st. Held, that the client not having attended the warrant of the 31st, could not set up the irregularity of the 21st. *In re Mourilyan.* vol. 11, p. 48

9. A party, by consenting to allow an accounting party to put in an affidavit instead of an examination, is not precluded from afterwards insisting on having an examination, if the discovery given by the affidavit be unsatisfactory. *Attorney-General* v. *Corporation of Chester.* vol. 11, p. 169

10. Under a decree in a special form directing the Master to take trust accounts, the Master allowed special interrogatories, without requiring a previous state of facts. Held, that there was no irregularity, and also that there had been a waiver by the accounting party obtaining time to put in his examination thereto. *Allfrey* v. *Allfrey.* vol. 12, p. 292

11. A Defendant having filed a plea and answer, obtained at the Rolls an order *nisi* to dissolve the common injunction. Held irregular; but the Plaintiff having afterwards appeared before the V.-C. *E.*, and undertaken to shew cause on the merits, held, that this was a waiver of the irregularity; and, that the waiver might be taken notice of, on a motion to discharge the order of course at the Rolls. *St. John* v. *Phelps.* vol. 12, p. 606

12. The cross-examination of a Defendant, tendered as a witness, is a waiver of his incompetency where the objection must be assumed to have been known at the time of the cross-examination. *Triston* v. *Hardey.* vol. 14, p. 21

13. An order for taxation was to be void, unless the Master made his report in a fortnight, or certified that further time was necessary. The time elapsed without such certificate, and the parties afterwards attended several times before the Master without objecting. Held, that the irregularity had been waived, and an order was made for the Master to proceed in the taxation. *Re Field.* vol. 16, p. 598

14. An order for the taxation of two out of four bills, and the delivery up of the papers, discharged, but without costs, the solicitor having attended the Taxing Master without having objected, and not having applied to discharge the order until six weeks after notice of it. *Re Wavell.* vol. 22, p. 634

WAIVER OF REQUISITIONS.

1. A party contracted for the purchase of the benefit of an agreement for the lease of a public-house, and also of the stock and good-will; he entered into possession before the lease had been granted, paid part of the purchase-money and mortgaged his interest. Held, that after this mode of dealing he was not entitled to call for the production of the lessor's title, or for evidence that the lease was made in conformity with the power under which it was granted. *Haydon* v. *Bell.* vol. 1, p. 337

2. A purchaser under the Court will not be allowed to take possession "without prejudice to objections to the title," even upon payment of his purchase-money into Court. *Hutton* v. *Mansell.* vol. 2, p. 260

3. Even after great delay and acquiescence, the Court will not compel a purchaser to complete, if the title appears to be manifestly bad. *Blachford* v. *Kirkpatrick.* vol. 6, p. 232

4. Applications of purchasers to pay purchase-money into Court, and to be let into possession, without prejudice to objections to the title, are always refused. *Rutter* v. *Marriott.* vol. 10, p. 33

WARD OF COURT.

1. In a settlement made on the marriage of a female ward of Court, provision must be made, out of her fortune, for the children of a future marriage. *Rudge* v. *Winnall.* vol. 11, p. 98

2. In 1839 *A. B.* married a ward of Court without its sanction. Held, in 1852, that notwithstanding the lapse of time, the Court possessed the same power over the parties, which it would have had on an application shortly after the marriage, and which it possesses in every case of the marriage of a ward of Court without the sanction of the Court, subject, nevertheless, to the due protection of the rights and interests of persons who have come into *esse* since that period. *Cave* v. *Cave.* vol. 15, p. 227

3. A marriage settlement, the husband being adult and the wife a minor, is binding on the former, though not on the latter. *Ibid.*

4. In 1839 *A. B.* married a ward of Court without leave: articles were executed both before and after the marriage. In 1840 a reference was made to approve of a settlement, but nothing was done thereon. In 1850 the parties executed a settlement of the wife's real estate without the sanction of the Court. In a suit instituted by the wife to annul the articles and confirm the settlement, Held, in 1852, that the power of the Court was not affected by the lapse of time, that the parties coming to the Court had given it authority to do what was right, and that a reference must be made to the Master to report as to the propriety of the settlement of 1850, and whether it ought to be varied, and to approve of a settlement of the wife's personal estate. *Ibid.*

5. On the settlement of a ward, no clause against anticipation was attached to her separate life estate. She incumbered her interest. Held, that the settlement could not be rectified to the prejudice of her incumbrancers. *Blackie* v. *Clark*; *Cock* v. *Clark*. vol. 15, p. 595
6. As to the binding effect upon a ward of Court and her husband of an order made after she came of age to settle her real estate. *Ibid.*
7. Generally, upon the marriage of a ward of Court without leave, the marriage being found valid, and the party in contempt having executed the settlement and paid the costs, is discharged. *Field* v. *Brown*. vol. 17, p. 146
8. *A. B.* was committed for contempt for marrying a ward. After the marriage had been found valid, but before a settlement had been executed, he was discharged upon his undertaking to abstain from any intercourse. After the settlement had been executed, the Court held, that it would be contrary to all principle either to compel the continuance of the undertaking or to make an order to the same effect. *Ibid.*
9. The terms of the settlement of a small fund belonging to a ward embodied in the order. *Wright* v. *King*. vol. 18, p. 461
10. On the marriage of a ward of Court, this Court will compel the settlement of her real estate, as directed by its order; but if this has not been done in the lifetime of the parties themselves, in a manner binding at law, her heir-at-law is not bound. *Field* v. *Moore*. vol. 19, p. 176
11. *A. B.* married a female ward of Court without leave, and under an order of Court a settlement was afterwards made, by which the husband covenanted to convey all the real estate of his wife to trustees, upon trusts excluding him and giving his wife a power to devise. It was executed by the wife, but was not acknowledged by her. On her death during coverture, having made a will devising the property: Held, first, that under the circumstances, the settlement was intended to be confined to the exclusion of the husband, and to give his wife a power over what, but for this settlement would have vested in him; secondly, that the wife's heir-at-law was not bound by the incomplete settlement, and that, therefore, her will was ineffectual to disinherit him. *Ibid.*
12. The almost invariable modern practice, in the case of a marriage with a ward of Court, without consent, is to exclude the husband altogether from taking any interest in her property. *Wade* v. *Hopkinson*. vol. 19, p. 613
13. Disinclination of the Court to sanction the marriage of an infant ward, where it is impossible for him, by reason of his infancy, to settle his real estate so as to go along with his title and to make provision for younger children. *Honywood* v. *Honywood*. vol. 20, p. 451
14. A ward of Court married ten days after attaining twenty-one. The Court declined ordering her fortune to be paid out of Court, on her consent, but directed it to be settled. *Biddle* v. *Jackson*. vol. 33, p. 282

WASTE.

1. A tenant for life has no right to open mines or clay-pits; but where the author of the settlement has previously worked them, the tenant for life may continue.
Whether a tenant for life can work mines or clay-pits, the working of which had been abandoned by the author of the settlement, *quære*. *Viner* v. *Vaughan*. vol. 2, p. 466
2. Where a testator devises the legal estate to trustees, and gives to a tenant for life an equitable estate only, with remainders over, such tenant for life ought not to cut timber without the consent of the trustees. *Denton* v. *Denton*. vol. 7, p. 388
3. It cannot be decided, as a general proposition, without any exception, that the conversion of ancient meadow into arable is to be treated as waste. *Duke of St. Albans* v. *Skipwith*. vol. 8, p. 354
4. In respect to waste, a parson or vicar is not to be considered as merely lessee for years, or as tenant for life, under a will or settlement. *Ibid.*
5. The Court will not restrain an incumbent from ploughing up meadow infested with moss and weeds for the purpose of laying it down again in grass when properly cleaned. *Ibid.*
6. Whether a patron is in any case entitled to an injunction to restrain the incumbent from ploughing up ancient meadows, *quære*. *Ibid.*
7. An estate was devised to *A.* for life without impeachment of waste, with remainder to his issue in tail, with remainder to *B.* for life without impeachment, &c., with remainder to his issue in tail. *A.* had no issue, and his assignees having committed equitable waste, it was held, that the right to the produce could not be determined until the death of *A.*, as he might have issue who possibly would be entitled to an interest in such produce. *Lushington* v. *Boldero*. vol. 13, p. 418
8. An estate stood limited to *A.* for life without impeachment of waste, with remainder to his issue in tail, with similar remainder to *B.* for life, with remainder to his issue in tail. *A.* and *B.* became bankrupt, and the assignees, under their joint commission, committed equitable waste by cutting ornamental timber. The produce was brought into Court. Held,

that the assignees were entitled to no part of the income, either in respect of the estate of *A.* or that of *B.*, but that the whole produce and accumulation belonged to the eldest son of *C.* as first tenant in tail. *Lushington* v. *Boldero.* vol. 15, p. 1

9. Where tenant for life, unimpeachable of waste, cuts and sells timber planted for ornament or shelter, the proceeds of that timber belong to the person having then the first vested estate of inheritance; and parties having intervening estates for life have no right to an account of the proceeds of the timber so cut, or to have such proceeds invested upon the same trusts with the lands. *Ormonde* v. *Kynnersley; Butler* v. *Kynnersley.* vol. 15, p. 10, n.

10. Trustees in whom an estate is vested ought not to cut down ornamental trees alleged to be prejudicial, without first applying to the parties beneficially interested for their assent, or to the Court for its authority; and the *onus* of shewing that the trees are prejudicial lies on the trustees. *Campbell* v. *Allgood.* vol. 17, p. 623

11. A perpetual injunction was granted against trustees, who cut down three ornamental trees, and failed in proving to the satisfaction of the Court that they were prejudicial to the residence. *Ibid.*

12. A bill filed against trustees and the tenant to prevent equitable waste was dismissed with costs as against the tenant, it not being shewn that he had committed or intended to commit any waste, though some had been committed by the trustees at his request. *Ibid.*

13. A trustee had vested in him a term of 500 years, without impeachment of waste. For the purpose of his trust, he sold and conveyed it by grant and demise, omitting the words "without impeachment of waste." Held, nevertheless, that the estate of the purchaser was unimpeachable of waste. *Beaumont* v. *The Marquis of Salisbury.* vol. 19, p. 198

14. *A.*, on his marriage, settled his estate on himself for life, "without impeachment of or for any manner of waste, save and except spoil or destruction, or voluntary or permissive waste, or suffering houses and buildings to go to decay, and in not repairing the same." Held, that he was entitled to cut all such timber (except ornamental) as the owner of the estate in fee simple, having due regard to his present interest and to the permanent advantage of his estate, might properly cut, in a due course of management. *Vincent* v. *Spicer.* vol. 22, p. 380

15. Tenant for life committing waste by cutting timber can gain no advantage from his wrongful act, but the produce is invested and accumulated for the benefit of the first estate of inheritance. Where timber is blown down, a tenant for life impeachable for waste is absolutely entitled to such parts as he would be entitled to cut himself, as thinnings, &c. and also to the interest produced by the investment of the produce of the rest. *Bateman* v. *Hotchkin.* (No. 2.) vol. 31, p. 486

16. After a long delay in taking proceedings against a tenant for life in respect of waste, the Court endeavours to deal liberally towards him. *Bagot* v. *Bagot; Legge* v. *Legge.* vol. 32, p. 509

17. When a tenant for life impeachable for waste improperly, knowingly and wilfully commits waste, he cannot derive any benefit from the timber cut. *Bagot* v. *Bagot.* vol. 32, p. 509

18. If a tenant for life commit waste the produce does not belong absolutely to the first tenant in tail *in esse* while there is a possibility of prior tenants in tail coming into *esse*. *Semble. Ibid.*

WASTE LANDS.

Where strips of land lie between the highway and the adjoining enclosure, the legal presumption is, that the soil belongs to the owner of the adjoining old enclosure. *Scoones* v. *Morrell.* vol. 1, p. 251

WATERWORKS.

1. The clause of "The Waterworks Clauses Act, 1847," are applicable to "lands and streams," in the same manner as those of "The Lands Clauses Consolidation Act" are applicable to "lands;" and, in the mode of compensation, the same distinction is taken between "lands and streams taken and used" and "lands and streams injuriously affected. *Ferrand* v. *The Corporation of Bradford.* vol. 21, p. 412

2. The diversion of a stream is a "taking and using it" within the meaning of the 85th section of the Lands Clauses Consolidation Act, which is incorporated in the Waterworks Clauses Act; and, before such diversion can be made, the value of the stream must be ascertained and secured to the owners of the land through which it passes. *Ibid.*

3. Whether by diverting a stream, the river into which it used to flow is "injuriously affected," or "taken and used," *quære. Ibid.*

WEST INDIA PLANTATION.

1. The rights of lien of consignees in this country and of the resident managers of *West India* plantations on the estates rest upon the same principle. *Bertrand* v. *Davies.* vol. 31, p. 429

2. The manager of a *West India* plantation has a lien for the costs of management on the interest of the person appointing him; but, if appointed by a tenant for

life, he has also a lien for the supplies which produced the first crop taken by the remainderman. *Bertrand* v. *Davies.* vol. 31, p. 429

3. Where the appointment of a manager of a *West India* plantation is not express, yet if the persons interested in the estate know that he is performing the duties and do not interfere, they must be presumed to have acquiesced in his continuance in that office, and they cannot dispute his claim to a lien on the estate for the expenditure, which, by their tacit acquiescence, they have encouraged him to make. *Ibid.*
4. Where a receiver or manager of a *West India* plantation is appointed by the Court in a suit properly constituted, he is considered as appointed on behalf of all persons interested in the property, and he is entitled to his ordinary commission and allowances and also to a lien on the estate, as against all persons interested in it, for the balance due to him. *Ibid.*
5. A manager of a *West India* estate, appointed by the tenant for life, who has a lien as against the remainderman, for the last year's supplies, continued in possession after the death of the tenant for life. Held, that he must be treated as a mortgagee in possession, and must account in the mode pointed out in *Leith* v. *Irvin*, 1 Myl. & K. 277. *Ibid.*

WEST INDIA RELIEF ACT.

The West India Relief Act (2 & 3 *Will.* 4, c. 125), gives, for moneys advanced by the Commissioners on mortgage upon the application of a mere tenant for life, absolute priority over all existing charges. *Lawrence* v. *The West India Relief Commissioners.* vol. 34, p. 234

WIFE.

1. A testator having married his deceased wife's sister, and while living with her as his wife, made his will, whereby he gave all his real and personal estate "to my wife" for life, and after her death, upon trust "for all and every my children hereafter to be born." At the date of the will, the testator had no children whatever, but two days after a son was born. Held, that the gift "to my wife" was good, but that the son could not take under the gift to children "hereafter to be born." *Pratt* v. *Mathew.* vol. 22, p. 328
2. A married woman, who had been separated for nineteen years from her husband, married the testator by the description of a widow. She had, about that time, heard a report that her husband was living and had made some loose inquiries, but believed he was dead. The testator having made bequests "to his wife," and the Court being of opinion that the evidence shewed no fraud on her part towards the testator: Held, that she was entitled to the legacies. *In re Petts.* vol. 27, p. 576
3. A marriage was dissolved by the Divorce Court, but, before the decree had become absolute, the husband married *A. B.* abroad, and by a settlement, reciting that marriage, a power was reserved to him to appoint a life interest to any surviving wife. Held, upon the construction of the settlement, that *A. B.* was an object of the power, whether the second marriage was valid or not. *Dolby* v. *Powell.* vol. 30, p. 534

WIFE'S REVERSIONARY INTEREST.

1. On the marriage of a female infant, her reversionary interest in choses in action was settled with the sanction of the Court for her separate use for life, with remainder to her children. She afterwards contracted two subsequent marriages, but no further settlement was executed on those occasions. Part of the reversionary interests fell into possession during the first coverture, and part during the second, and were transferred to the trustees. Held, first, that although the deed made during infancy was not binding in respect of the reversionary interests, as against the wife surviving, still she might, while discovert, adopt it if for her benefit. Secondly, that the wife having survived, and not having called for a transfer of the fund, must be deemed to have acquiesced in and adopted it, as it was for her interest to do so. Thirdly, that she must be deemed to have married her second husband on the faith that her property was protected by the settlement, and that he was bound by it. Fourthly, that the third husband, who had notice of the settlement previous to his marriage, and had for some years after acquiesced in it, was bound thereby, and had no interest in the settled property. *Ashton* v. *M'Dougall.* vol. 5, p. 56
2. Whether a *feme covert* who is entitled to a reversionary interest in a chose in action can, by obtaining a release of the prior interest, effectually dispose of the property, *quære.* *Story* v. *Tonge.* vol. 7, p. 91
3. A *feme covert* was entitled to a reversionary interest in a sum in the funds. All the other parties entitled surrendered their interests to her. The fund was in Court. Held, that the *feme covert* was still unable to dispose thereof. *Whittle* v. *Henning.* vol. 11, p. 222
4. When a *feme covert* is entitled to a reversionary interest in a chose in action, the release of the husband is as inoperative

as his assignment, to bind his wife's right by survivorship. *Rogers* v. *Acaster*. vol. 14, p. 445

5. A husband may make a valid assignment of his wife's reversionary interests in leaseholds, but *secus*, if the interest be of such a nature that it cannot by possibility vest in the wife in possession during the coverture. *Duberley* v. *Day*. vol. 16, p. 33

6. A husband and wife made a post-nuptial settlement of the wife's reversionary chose in action. The wife survived her husband, and it afterwards fell into possession. The wife having done no act to repudiate the settlement: Held, in a suit to charge the trustees with a breach of trust, that it was no answer to say that the settlement was void as against the *feme covert*. *Thompson* v. *Finch*. vol. 22, p. 316

7. A deed relating to a reversionary interest in a fund was executed by some married women and their husbands. One having survived her husband, who died before the fund fell into possession: Held, that the deed was not binding on her, and that therefore it was not binding on any of the other parties to it. *Bolitho* v. *Hilyar*. vol. 34, p. 180

8. Husband and wife mortgaged the wife's reversionary interest in a fund. Afterwards, and before the reversion fell into possession, the wife obtained a decree for judicial separation. Upon the reversion afterwards falling in, in the husband's lifetime: Held, that the mortgage did not affect it, and that the fund belonged absolutely to the wife. *In re Insole*. vol. 35, p. 92

WILL.

[*See* BEQUEST, DESCRIPTION OF GIFT, DESCRIPTION OF LEGATEE, ISSUE AT LAW, LEGACY, PRECATORY TRUST, PROPERTY, VESTING, WILL (CONSTRUCTION), WILL (PROOF), WILL (REVOCATION), WORDS (MEANING).]

WILL (CONSTRUCTION).

[*See* CONSTRUCTION.]

1. The word "*issue*" in a will, held on the context to have two different meanings as to two moieties of a devised estate. *Carter* v. *Bentall*. vol. 2, p. 551

2. Bequest to testator's widow for life, and on her decease to his son for life, and on his demise the principal to become the property of any children he might leave. Then followed a gift over in case the son died before his mother (omitting the words "without leaving children"). The son predeceased both his father and mother, leaving an only child, who survived them. Held, that such child was entitled to the principal sum after the grandmother's death; and that to effectuate the intention of the testator, the words "without leaving any child" must be implied after the word "dying." *Abbott* v. *Middleton*. vol. 21, p. 143

3. In construing a will, plain and distinct words are only to be controlled by words equally plain and distinct. *Goodwin* v. *Finlayson*. vol. 25, p. 65

4. It is a canon of construction, that where a testator has affixed a particular meaning to a word in one part of his will, it shall be construed as having the same meaning in all other parts of it, unless it violates the sense. *Rhodes* v. *Rhodes*. vol. 27, p. 413

5. The word "then" used twice in the same sentence in a will construed, in the first instance, as pointing to the event, and in the second as an adverb of time. *Gill* v. *Barrett*. vol. 29, p. 372

WILL (PROOF).

1. A will, proved abroad and retained there, established, on production of a copy certified under the hand and seal of the proper officer, &c, which had been admitted to probate in the Ecclesiastical Court here. *Pullan* v. *Rawlins*. vol. 4, p. 142

2. Will established on secondary evidence, the original being in the colonies. *Gardner* v. *Myre*. vol. 4, p. 143

3. Will proved in the West Indies established on production of attested copy and prerogative probate. *Bayley* v. *Bayley*. vol 4, p. 143

4. A lost will of real estate established by means of a copy. *Ellis* v. *Medlicott*. vol. 4, p. 144

5. Will established on production of official transcript and of prerogative probate. *Harrison* v. *Weale*. vol. 4, p. 144

6. Whether, where *A.*, a residuary legatee by artful and fraudulent misrepresentation to the testator of the character of *B.*, induces the testator to revoke a legacy given to *B.*, the benefit of which revocation results to *A.*, this Court has jurisdiction to affix a trust on *A.* in favour of *B.*, to the extent of the fruit of the fraud possessed by *A.*, or whether the matter belongs exclusively to the Ecclesiastical Court; and, secondly, whether such trust can be declared after a sentence of the Ecclesiastical Court, in which the question of undue influence was in issue, *quære*. Held, in the affirmative by the Master of the Rolls, and in the negative by the Lord Chancellor. The parties thereupon appealed to the House of Lords. *Allen* v. *M'Pherson*. vol. 5, p. 469

7. Practice in a suit to establish a will where one of the witnesses is abroad. *Hare* v. *Hare*. vol. 5, p. 629

8. As to personal estate, the Court is bound

by the terms of the will appearing on the probate; but if, on production of the original, a doubt exists as to the accuracy of the probate copy, the Court will give an opportunity to the parties to apply to the Ecclesiastical Court to set it right. *Havergal* v. *Harrison.* vol. 7, p. 49

9. A will thirty years old, produced from the proper custody, proves itself. The thirty years are to be computed from the date of the testator, and are calculated as at the time of its production. *Man* v. *Ricketts.* vol. 7, p. 93

10. Probate obtained by *A.* in the name of *B.*: Held, that a party giving faith to the probate was bound to see that the person claiming under it was a real person of the name of *B.* *Ex parte Jolliffe.* vol. 8, p. 168

11. Operation of a probate in evidencing the will and authenticating the title of the executor to property not comprised within the grant of administration. *Matson* v. *Swift.* vol. 8, p. 368

12. As to the right of the Crown to probate duty on realty of a deceased party impressed, in equity, with the character of personalty. *Ibid.*

13. *J. S.* conveyed fee simple estate, upon trust by sale, &c., to pay certain debts, and the residue to himself, his executors, administrators, and assigns, without any equity thereon, in favour of his heirs, or real representatives, notwithstanding the estate might remain unconverted at the time of his death. The estate was sold after his death. Held, that no part of the produce was liable to probate duty. *Ibid.*

14. A Plaintiff sued to recover a large unliquidated sum due to her testatrix, but the stamp on the probate did not cover the amount claimed. Held, that the Plaintiff could not obtain a decree even for accounts and inquiries, until the probate had been properly stamped. The cause stood over, and the Commissioners stamped the probate and gave credit for the duty. *Howard* v. *Prince.* vol. 10, p. 312

15. A testator left four testamentary instruments, duly executed. After the Ecclesiastical Court had held that the second and third alone were valid as to the personal estate, this Court, on the certificate of the Common Pleas, decided, that as to the real estate, the last instrument alone constituted the last will. *Plenty* v. *West.* vol. 16, p. 173

16. A testator, in 1836, devised all his real estate to his wife, and appointed her executrix. He afterwards purchased an advowson and died. The widow proved this will, and sold the advowson. An objection being made that the after-purchased property did not pass, a search was made, and another testamentary instrument of 1847 was found, purporting to confirm a will of 1826. Held, that the purchaser was entitled to the same amount of proof of the codicil of 1847 as would be necessary to establish against the heir, and that it ought to be proved in the Ecclesiastical Court. *Weddall* v. *Nixon.* vol. 17, p. 160

17. Under the old practice, a disputed will could not be proved *viva voce* at the hearing; but liberty was given, under the new practice, to prove a will in Court, and the heir was allowed to cross-examine the witnesses. *Chichester* v. *Chichester.* vol. 24, p. 290

WILL (REVOCATION).

1. By her will a testatrix gave legacies of 200*l.* each to the seven children of *J. B. B.*, and also other interests. By her first codicil she revoked the legacies of 200*l.* to the children of *J. B. B.*, and all other legacies given by the will, and in lieu gave legacies of 200*l.* each to *Samuel* and four other children of *J. B. B.* by name. By her second codicil she cancelled all legacies left in her will to *J. B. B.*'s children, and by a third codicil she revoked the legacy of 200*l.* by a previous codicil to her will given to *Samuel.* Held, that the legacies of 200*l.* each, given to the other four children by the first codicil were not revoked. *Bunny* v. *Bunny.* vol. 3, p. 109

2. A testator, by will duly attested, gave all his real and personal estate to trustees, to convert into money and pay his debts, and then to appropriate and take out of his said trust moneys 1,000*l.*, which gave to the Plaintiff. By a codicil, not properly attested so as to pass real estate, he revoked the legacy. Held, that on this will the testator had made his real and personal estate a common fund for payment of this legacy: that the revocation was inoperative as regarded the real estate, and that the Plaintiff was entitled in the proportion which the real estate bore to the personal. *Stocker* v. *Harbin.* vol. 3, p. 479

3. A testator devised an estate *X.*, and other estates to *A.*, charged with annuities and an estate *Y.*, and his residuary real, and personal estate to *B.*, subject to the payment of his debts, funeral expenses, and legacies. He afterwards revoked so much of the second devise as included *Y.*, and devised it, subject to the same annuities, and in the same manner as the estate *X.* Held, that the charge of debts, &c. on *Y.* was revoked. *Ravens* v. *Taylor.* vol. 4, p. 425

4. A testatrix devised a real estate, and afterwards sold it. The purchase was not completed until after her death. Held, that the purchase-money belonged to the personal representatives, and not to the

devisees of the testatrix, notwithstanding her lien on the estate for the purchase-money, and notwithstanding the 1 *Vict.* c. 26, s. 23, which directs "That no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death." *Farrar* v. *The Earl of Winterton.* vol. 5, p. 1

5. Devise to the children of *A.* held not to be revoked, by an expression in a codicil that they were not intended to take any beneficial interest under the will or codicil. *Cleoburey* v. *Beckett.* vol. 14, p. 583
6. A testator devised his real estate to his brother *William* for life, with remainder to his first and other sons in tail, with remainders over; and he bequeathed his residuary personal estate between his nephews and nieces. By a codicil, he revoked his will, so far only as it was altered by the codicil, and he gave to his nephews and nieces, except (as he said) his brother *William*'s children, "who are not intended to take any beneficial interest under his will or this codicil," 1,000*l.* each. Held, that the devise to the children of *William* was not revoked. *Ibid.*
7. A testamentary paper relating to real estate alone, commencing, "This is the last will and testament of me relating to all my real and estate whatsoever." Held, totally to revoke a prior will. *Plenty* v. *West.* vol. 16, p. 173
8. A testator appointed his wife sole executrix, and he made her and *A.* trustees. By a codicil he revoked the appointment of his wife as executrix, on the ground that "the duties were too arduous for a lady," and he appointed *A.*, *B.* and *C.* "executors in trust of his will." By another codicil he referred to his having revoked the executorship, and to having appointed *A.*, *B.* and *C.* executors. Held, that the revocation was confined to the office of executrix only. *Graham* v. *Graham.* vol. 16, p. 550
9. The testator appointed *A.*, *B.* and *C.* his executors and trustees, and devised and bequeathed to them his real and personal estate on trust. By a codicil he desired that *A.*, named in his will as "executor," be no longer such, and he nominated *D.* to succeed him, but he made no alteration in the devise. Held, that *A.* still remained a trustee of the will. *Cartwright* v. *Shepheard.* vol. 17, p. 301
10. A testator appointed *A.*, *B.* and *C.* to be trustees and executors. He revoked the appointment of *C.* as executor and trustee by his first codicil. By a second codicil he revoked the appointment of *B.* and *C.* as executors, but ratified his will except as altered thereby. Held, that the first codicil was not revoked, and that *C.* was not a trustee. *Ibid.*
11. A testator devised an estate to *A.* for life, and from "and immediately after his decease" to *B.* in tail. By a codicil, he revoked the devise to *A.*, and in lieu gave him an annuity. Held, that there was no intestacy as to *A.*'s life estate, so as to entitle *A.* (the heir) to take it as undisposed of, but that *B.*'s estate was accelerated. *Lainson* v. *Lainson.* vol. 18, p. 1
12. A testator bequeathed the residue to three trustees and their heirs, in trust for his daughter for life, with remainder over. He afterwards struck out the names of his trustees and substituted that of his daughter. A fac-simile probate was granted. Held, that though there was a revocation of the estate and interest given to the trustees, there was no revocation of the subsequent part of the will which declared the trusts. *Shea* v. *Boschetti.* vol. 18, p. 321
13. Where a bequest is made to *A.* in trust for *B.*, the striking out of the gift to *A.* does not revoke the beneficial gift to *B.* *Ibid.*
14. An appointment made in 1840, of the whole fee, under a power in a settlement of 1825, relimiting in substance the old estates, though made for the purpose and with the sole intention and object of introducing a limitation omitted from the settlement by mistake. Held, to be a revocation of a will made in 1827, in pursuance of a power in the settlement of 1825. In such a case parol evidence is inadmissible to shew what was the intention or object of the parties. *Walker* v. *Armstrong.* vol. 21, p. 284
15. On the marriage of *A.* and *B.* in 1824, two estates belonging to *B.*, the wife, were vested in trustees upon certain trusts in favour of *A.* and *B.* and the issue of the marriage, but by mistake no provision was made for the daughters of any son of the marriage, and, as to one of the estates, no power of disposing of it was given to *B.* in case there should be no issue of the marriage. The blunder being discovered, *A.* and *B.*, in 1825, under a general power of appointment given them by the settlement, paramount to the limitations therein, relimited the estates to the old uses (except as to the life estates to themselves and the survivor of them, which were omitted by a second mistake), and supplied the omission in the original settlement. There being no issue, *B.*, in 1827, made her will in pursuance of the power "reserved to her by the original settlement

and every other power enabling her in that behalf." The second blunder being afterwards discovered, in 1840, *A. B.*, under the general power, appointed to the old uses, and supplied the second omission. This deed of appointment recited the intention of *A.* and *B.* to vary the limitations, and it was clear in the opinion of the Court that the sole intention and object of the appointment was to cure the second blunder. Held, nevertheless, that the will of *B.* was revoked. But upon appeal the Lords Justices, on an altered record, reformed the deed of 1840, and so gave effect to the will. *Ibid.*

16. Under his marriage settlement, *A. B.* had power to appoint the reversion in fee of the settled estate, and the trustees had a power of sale with his consent. *A. B.*, by his will, appointed it to trustees, to sell and stand possessed of the produce in trust for a class; and he gave all his real and personal estate "not thereinbefore specifically disposed of" to his widow. Subsequently, the trustees with *A. B.*'s consent, sold the estate; but, at his death, the conveyance had not been executed by one of the trustees, and the purchase-money had not been received. Held, notwithstanding the 1 *Vict.* c. 26, ss. 19, 23, that the gift to the class was inoperative, and that the purchase-money passed, under the residuary gift, to the widow. *Gale* v. *Gale.* vol. 21, p. 349

17. A testator directed his trustees to stand possessed of a sum of money, upon trust in favour of his son and his son's wife and children, with a power to the son, on failure of issue, to appoint the fund by will or codicil. He also gave the trustees a discretionary power to give the fund to his son, discharged of all the trusts. By a codicil, the testator revoked the power given to the son, and directed that after the son's decease, and on failure of issue, the fund should go to the son's wife for life, and, after her decease, form part of testator's residuary estate. Held, that the discretionary power given by the will to the trustees was not revoked by the codicil. *Butler* v. *Greenwood.* vol. 22, p. 303

18. A testator gave 4,000*l.* to his executors upon trust, with the concurrence of his sister, to settle it by deed, on trust to provide "stipends and annuities" for indigent persons, not exceeding nine. The deed was also to regulate the management, &c. of the "institution." He also devised nine freehold houses to his sister, suggesting to her, but without imposing any obligation, "legal, equitable or moral," that they might be converted into almshouses for the recipients of the income of the legacy. By a codicil, he revoked such parts of the will "as related to the building of certain almshouses" (there was none), and released his executors "from carrying out the same and the stipends and annuities connected therewith." Held, first, that the charitable gift was valid; and secondly, that it had been revoked by the codicil. *Baldwin* v. *Baldwin.* vol. 22, p. 413

19. By his will, a testator bequeathed stock to his granddaughters absolutely. By a codicil he revoked the bequest, and directed his trustees to hold the stock for his granddaughters for life, with remainder to their issue. Held, that this was a total revocation of the first gift, and the issue having failed, that the stock fell into the residue. *Nevill* v. *Boddam.* vol. 28, p. 554

20. A testator bequeathed his residue in trust for his sisters and their issue, and he afterwards, by the same instrument, appointed his wife "his residuary legatee." Held, that the latter clause did not revoke the former. *Davis* v. *Bennet.* vol. 30, p. 226

21. A testatrix, by her will, devised real estates, and, by a subsequent deed, attested by two witnesses, she conveyed them on other trusts. Held, that the deed (assuming it to be void as *turpis contractus*) was not such a "writing declaring an intention to revoke" the will, as is required by 1 *Vict.* c. 26, s. 20, and therefore that the will operated on such estate and interest as the testatrix possessed in the property at her death. *Ford* v. *Davésiés De Pontès*; *Davésiés De Pontès* v. *Kendall*, vol. 30, p. 572

22. A testatrix devised an estate to *De P.*, charged with some pecuniary legacies; she afterwards, by deed, conveyed the estate to him free from those charges. After her death, it was insisted that the deed was void, being executed for an immoral consideration; but that it nevertheless revoked the will. *De P.* having, however, submitted to give effect to the dispositions contained in the will in favour of the legatees, the Court abstained from expressing any opinion as to the validity of the deed, holding that, even if invalid, the will was not revoked. *Ibid.*

23. A testator made a will and codicil, the former was attested so as to pass real estate, but the latter was not. By his will he bequeathed a legacy of 3,000*l.*, and charged it on his real "in aid of his personal estate." And he devised his real and personal estate to trustees, charged with his legacies, upon trust thereout, by mortgage, sale, or other disposition, to pay the legacy of 3,000*l.* By the codicil he reduced the legacy from 3,000*l.* to 2,000*l.* Held, that the codicil, though not properly attested, effected the reduction. *Coverdale* v. *Lewis.* vol. 30, p. 409

24. A will was partially revoked by erasures and was afterwards republished.

Held, that the revocation was final and not deliberative. *Ibbott* v. *Bell.* vol. 34, p. 395

25. If a will be revoked by cancellation, for the purpose of giving effect to different dispositions, such revocation is ineffectual if the substituted dispositions be not effective. *Ibid.*
26. The rule of English law, following that of the civil law, is this: "*Tunc prius testamentum rumpitur cum posterius perfectum est.* *Ibid.*
27. The testatrix, by her will, made in 1819, but not properly attested, purported to give real estate to seven persons as tenants in common. In *August* following she executed a codicil, properly attested, which, by referring to the prior instrument, made it effective as regarded real estate. In *November* following she cancelled the names of two of the seven devisees and re-executed the will, but it was not properly attested. In *February*, 1821, she republished her will by an instrument properly attested and died in 1823. Held, that the erasure of the names of the two devisees was final and not deliberative, and that they took no interest in the real estate. *Ibid.*

WINDING UP.

[*See* COMPANY.]

1. Where a company is insolvent, and has been getting worse, it is no answer to an application to wind it up to say, that the difficulties are temporary, and that there is hope of more prosperous times. *In re Norwich Yarn Company.* vol. 12, p. 366
2. A bill incurred by a projected company was ordered to be taxed upon the submission of four of the directors to pay. An official manager was afterwards appointed for winding up the company. The Court refused to restrain the solicitors from enforcing payment against the directors, the undertaking being personal. *In re Sudlow and Kingdom.* vol. 12, p 527
3. An order was made for winding up an abortive company. Afterwards a bill was filed by a shareholder, on behalf, &c. against the directors, complaining of their acts, and seeking to have the accounts taken to make them responsible, and to have the deposits returned. The Court, on motion, stayed the proceedings in the suit. *Parbury* v. *Chadwick.* vol. 12, p. 614
4. By a deed of settlement of a public company, it was provided, that the company was to continue forty years; that the shares of deceased proprietors should belong to their personal representatives; but that executors should never be deemed proprietors until they should be duly admitted proprietors, on the approval by the directors, and had executed the deed, &c., "and then, but not before," they were to become proprietors, and entitled to receive the dividends. Held, that upon the death of a proprietor, his estate continued liable, until a new personal liability had been created pursuant to the deed. *In re The Northern Coal Mining Company* (*Blakeley's case*). vol. 13, p. 133
5. By the deed of settlement of a public company, the directors had a power of pre-emption of shares, at a price to be ascertained from the last sales appearing in "the transfer register book," and then, "but not before," all future liabilities of the vendors were to cease. In 1840 the directors purchased of *A. B.* a number of scrip shares, but having kept no such book, the specific directions were not and could not be followed. The company was afterwards wound up, when it was sought to charge *A. B.* as a contributory, but held, that the company was not entitled to treat the transaction as void, by reason of the non-observance of the forms, which their own irregularity and neglect had made it impossible to observe. *Re The Northern Coal Mining Company; Ex parte Bagge.* vol. 13, p. 162
6. Where in the course of winding up a legal claim is made against the company, it is not imperative on the Court to decide it, but it may, without the assent of the claimant, require him to establish his claim at law. *Re The Norwich Yarn Company.* vol. 13, p. 426
7. An advertisement under the Joint Stock Companies Act stated, that the petition would be heard on *Saturday* the 20th of *December*. The 20th being on a *Thursday*, the Court would not hear the petition, but required fresh notices to be given. *In re The Joint Stock Companies Winding-up Act.* vol. 13, p. 434
8. The 12th section of the Winding-up Act gives the Court a discretion; and where it appeared that the majority of shareholders were attempting, with the creditors, to arrange the affairs of a banking company which had stopped payment, the Court refused, on the application of a single shareholder, to make an immediate order for winding up the company, but ordered the petition to stand over for two months, to enable the company and creditors, if possible, to settle the affairs without the intervention of the Court. *Re Monmouthshire and Glamorganshire Banking Company.* vol. 15, p. 74
9. A decree was made, declaring that an incorporated company were bound to indemnify its retired directors, and a reference was made to the Master. An order being afterwards made to wind up the company, the official manager was substituted in the suit. On further di-

rections, an order for payment and indemnity was made on the official manager, and the Master was directed to make proper calls on the contributories for that purpose. *Gleadow* v. *The Hull Glass Company.* vol. 15, p. 200

10. Form of order in such a case where the Plaintiffs were themselves contributories. *Ibid.*

11. A company may be wound up in chambers under the acts 1848 and 1849, instead of by the Master. *Re The Newcastle, Shields and Sunderland Union Bank, and in the Matter of the Winding-up Acts,* 1848, 1849. vol. 17, p. 470

12 Two traders, becoming embarrassed, assigned their joint and separate estate to trustees, to carry on the business for the benefit of their creditors, parties to the deed, and to pay the surplus to the traders. The trustees accordingly carried on the business, under the name of a company, until it became embarrassed. Held, that such a company was not within the provisions of the Winding-up Acts. *Re Stanton Iron Company.* vol. 21, p. 164

13. A telegraph company obtained an act of incorporation. It laid down about 400 miles of wires, but had spent the whole subscribed capital of 26,000*l.* and 16,000*l.* beyond, and judgments to the extent of 1,800*l.* had been entered up against the company. On the petition of a shareholder it was ordered to be wound up, though opposed by a director on behalf of the holders of one-eighth of the shares, who objected that the act of parliament would thereby become void, and stated that the materials would sell for very little, that the works might be completed for a small sum, and that there was some prospect of obtaining further pecuniary assistance. The Court considering that, under the circumstances, the Petitioner ought not to be compelled to go on with an undertaking, which might possibly double his present liability. *In re The Electric Telegraph of Ireland.* vol. 22, p. 471

14. Directors who had voted to themselves a number of paid-up shares, held liable to all the calls. *Daniel's case.* (No. 2.) vol. 23, p. 568

15. The directors of a company voted themselves 2,400 "paid-up shares" for their services. The company having been ordered to be wound up, the official manager insisted in having them placed on the list of contributories in respect of these shares and he succeeded. Held, that though the shares were voted to them as "paid-up shares," the directors were still liable to pay the calls like the other shareholders. *Ibid.*

16. A company established in 1853 had since carried on its business at a loss in every year, amounting in the whole to 6,507*l.* There were irregularities in the management, the directors had not paid for shares subscribed for by them, interest had been paid out of capital, and the balance at the bankers had been reduced to 300*l.*; on the other hand, the calls on the shares had hitherto been one-fifth only. Held, by the Master of the Rolls and the Lords Justices (on appeal) that there was no case for winding it up. *In re The National Live Stock Insurance Company.* vol. 26, p. 153

17. The creditors' representative appointed under the 20 & 21 *Vict.* c. 78, is entitled to attend on the settlement of the list of contributories. *In re The Mexican and South American Mining Company.* (No. 1.) vol. 26, p. 172

18. In 1852 a company was registered as an unlimited company, and in 1856 it was registered as a "limited" company. Held, that, under the acts, the Court of Chancery had no jurisdiction to make an order for winding it up, the Court of Bankruptcy alone having jurisdiction in such a case. *Plumstead Water Company* v. *Davis.* vol. 28, p. 545

19. A petition for winding up a company was presented before its bankruptcy, but was heard afterwards. There being no application by the assignee to wind it up the Court held, that, notwithstanding the 11 & 12 *Vict.* c. 45, s. 6 (which prevents any other person than the assignee applying for a winding-up after a fiat), it had jurisdiction to make the order, and it made the order accordingly. *Re The Mitre General Life Assurance, &c. Association.* vol. 29, p. 1

20. A petition was presented by a shareholder to wind up a company, after a petition to make the company bankrupt had been presented, but before any adjudication. Held irregular, and dismissed with costs. *Ibid.*

21. A creditor of a company, which was in the course of being wound up, established his debt against the official manager. The Court refused to allow the creditor to proceed directly against the contributories to recover the amount under the 11 & 12 *Vict.* c. 45, s. 56, thinking that the proper course was to pay the debt by means of a call. *In re The Cameron Coalbrook, &c. Company.* vol. 30, p. 216

22. Money borrowed for a company and *bonâ fide* applied for its benefit, held recoverable, though the directors had no borrowing powers. *Hoare's case; In re The Electric Telegraph Company of Ireland.* vol. 30, p. 225

23. In winding up the affairs of a company, the Court, notwithstanding the opposition of a large shareholder, has jurisdiction, under the Joint Stock Companies Acts, to direct a compromise of

any claim against the company to be carried into effect, if apparently it is for the benefit of the greater number of shareholders. *In re The Risca Coal and Iron Company.* vol. 30, p. 528

24. The deed of settlement of a company provided, that the shareholders, after a transfer of their shares, should, as between them and the other proprietors, be discharged from all liability. A petition was presented for a winding-up order by three persons who had transferred their shares, and by another whose shares had been forfeited. They had been sued by creditors of the company and alleged themselves to be contributories. The Court made the order. *In the Matter of The Times Fire Assurance Company.* vol. 30, p. 596

25. An insurance company, registered under the act of 1844, had resolved upon a voluntary winding-up prior to the act of 1862, under which it had never been registered. Held, that such company was precluded by the 25 & 26 *Vict.* c. 89, s. 209, from presenting a petition to wind up, either solely or in conjunction with a contributory. *In re The Waterloo Life, &c. Assurance Company.* (No 1.) vol. 31, p. 586

26. A creditor of a company, on the day on which a winding-up order was made, obtained a judgment against the company, and issued a *fi. fa.*, which he subsequently delivered to the sheriff for execution. The Court, on the application of the official liquidator, restrained further proceedings. *In re The Waterloo Life, &c. Insurance Company.* (No. 2.) vol. 31, p. 589

27. A provident society, registered under the Act of 1852, is to be wound up in the County Court. *Re The Rotherhithe, &c. Industrial Society.* vol. 32, p. 57

28. The four days, within which the affidavit in support of a petition to wind up must be sworn and filed, extended by the Court. *Re The Patent Screwed Boot and Shoe Company.* vol. 32, p. 142

29. The Court will not, upon the hearing of a petition to wind up a company, enter into a contest as to the person to be appointed official liquidator, and it will not appoint one, on that occasion, unless with the concurrence of all parties. *Re The Commercial Discount Company (Limited).* vol. 32, p. 198

30. Prior to "The Companies Act, 1862" (25 & 26 *Vict.* c 89), a limited company, which was liable to be wound up in the Bankruptcy Court, passed a resolution for winding up voluntarily; but after the Companies Act, 1862, had come into operation, a petition was presented for winding it up compulsorily. Held. that, under the 25 & 26 *Vict.* c. 89, s. 207, the jurisdiction was in Bankruptcy, and not in Chancery. *In re The West Silver Bank Mining Company (Limited).* vol. 32, p. 226

31. In 1848 *A.* transferred some shares in a company to *B.* In 1851 the company was ordered to be wound up. The Court refused, in 1863, to allow the official manager to contest the validity of the transaction, until he had a sufficient ground for it, by stating to the Court what information he had received on the subject, and when he first obtained it. *Re Cameron Coalbrook Company; Hunt's case.* vol. 32, p. 387

32. Where the proceedings in a voluntary winding-up, under the act of 1856, were dilatory and unsatisfactory, and had not come to a conclusion at the end of five years, the Court, upon the petition of a shareholder, directed a winding up under the Court. *Re The Fire Annihilator Company.* vol. 32, p. 561

33. A company, registered under the Act of 1856 (18 & 19 *Vict.* c. 47), but not under the Act of 1862 (25 & 26 *Vict.* c. 89), may be wound up voluntarily by a resolution passed after the latter act came into operation. *Re The Torquay Bath Company.* vol. 32, p. 581

34. Under a voluntary winding-up, the Court has jurisdiction to stay actions by creditors against the company. *In re Keynsham Company.* vol. 33, p. 123

35. Upon granting an injunction to stay an action by a creditor against a company, during a voluntary winding-up, the Court required the liquidators to give the creditor access to the proceedings, and gave to the creditor his costs down to the time he had notice of the winding-up. *Ibid.*

36. An affidavit in support of a petition to wind up sworn before the presentation of the petition is ineffectual, and it must be re-sworn before an order can be made on the petition. *The Western Benefit Building Society.* vol. 33, p. 368

37. In a suit against a company to restrain trespass, liberty was given, under the 25 & 26 *Vict.* c. 89, s. 87, to the Plaintiffs, after a winding-up order, to proceed with the suit. *Wyley* v. *The Exhall Coal Mining Company (Limited).* vol. 33, p. 538

38. A company established for working mines in *Cornwall*, was registered in the Stannaries Court, but had its registered office in London. It never commenced business, and never possessed or worked any mine:—Held, under the 25 & 26 *Vict.* c. 89, s. 81, that it was a company "engaged" in working a mine in the Stannaries, and that the Stannaries Court, and not the Court of Chancery, was the proper jurisdiction for winding it up. *Re The East Botallack Consolidated Mining Company (Limited).* vol. 34, p. 82

39. Petition by a shareholder in a limited company, whose shares were fully paid

up, to wind up the company refused, though the company was heavily in debt and made very small profits, the petition not being supported by any other shareholder or creditor, and the company, which had been at work about a year and a half, not having had a fair trial. *Re The Patent Artificial Stone Company (Limited).* vol. 34, p. 185

40. An order for winding-up a company made, on the petition of the holder, by transfer, of scrip certificates, upon the Petitioner admitting his liability as a contributory. *Re Littlehampton Steam Ship Company (Limited).* vol. 34, p. 256

41. A creditor of a limited company petitioned for a compulsory winding-up order. This was objected to by the company, and by a considerable body of creditors, who supported a voluntary winding-up:—Held, that the Petitioners were entitled to a compulsory order. *The General Rolling Stock Company (Limited).* vol. 34, p. 314

42. Principles on which this Court proceeds in such cases stated. *Ibid.*

43. The holder of fully paid-up shares in an insolvent company is not entitled to a winding-up order, but where it is solvent and other shareholders have not paid up in full, he may have a winding-up order, upon shewing a proper case, in order to enforce contribution. *Re The Lancashire Brick and Tile Company.* vol. 34, p. 330

44. The 165th section of "The Companies Act, 1862" (25 & 26 *Vict.* c. 89) which enables the Court to compel a director, &c. to repay any moneys of the company misapplied or retained, can only be exercised where the winding-up is compulsory. *In re The Bank of Gibraltar and Malta (Limited).* vol. 34, p. 556

45. The 165th section of the 25 & 26 *Vict.* c. 89 was intended to apply to cases free from much complication and difficulty. *Ibid.*

46. Petition by shareholders, under a voluntary winding-up, to make directors repay moneys applied by them improperly and *ultra vires*, dismissed, the proper remedy (if any) being by bill. *Ibid.*

47. The Court will not, under the 25 & 26 *Vict.* c. 89, s. 100, make an order *ex parte* for the delivery over of documents by the manager of a company to the official liquidator. *In re The Commercial Union Wine Company.* vol. 35, p. 35

48. The fact of a company having neglected to pay a debt three weeks after demand made, under the 25 & 26 *Vict.* c. 89, ss. 79, 80, is not sufficient to entitle the creditor to a winding-up order, unless it be shewn that the company is also unable to pay its debts. Where a debt is disputed by a company, a petition by the creditor to wind it up will not be allowed to stand over, unless it is believed that when the debt has been established by a judgment, such judgment could not be enforced against the company. *Re The London Wharfing and Warehousing Company (Limited).* vol. 35, p. 37

49. The provisions in the 25 & 26 *Vict.* c. 89, ss. 79, 80, for winding up a company, in default of its paying a debt three weeks after notice, do not apply where there is a *bonâ fide* dispute as to the amount due, though there may be an admitted debt exceeding 50*l.* *Re The Brighton Club and Norfolk Hotel Company (Limited).* vol. 35, p. 204

50. The Court cannot direct payment, in full, to a clerk in a company which is being wound up of three months' arrears of salary, as in the case of a bankruptcy, but he must come in *pari passu* with the other creditors of the company. *Re The General Rolling Stock Company (Limited).* vol. 35, p. 207

51. The order to wind up a company is notice to the servants of the company of their discharge from its service. *Ibid.*

52. During a voluntary winding-up, an action having been brought against the company on bills of exchange, the Court stayed execution only, and directed the costs to be added to the debt. *The Peninsular, &c. Banking Company.* vol. 35, p. 280

53. Rules as to costs upon petitions to wind up public companies. When the Court makes no order on a petition to wind up, the shareholders supporting it get no costs, and the shareholders resisting it get no costs unless personally assailed. But when the Court makes the winding-up order, the shareholders or creditors supporting it get one set of costs between them. *Re The Humber Iron Works Company.* vol. 35, p. 346

54. Under a winding up of a company, a party claiming as a creditor must either submit to produce all documents in his possession relating to his claim, or it will be disallowed. *Re The Constantinople and Alexandra Hotel Company.* vol 35, p. 349

55. An order for the appointment of an official liquidator, obtained *ex parte* before an order to wind up the company had been made, discharged. *Re The Railway Finance Company (Limited).* vol. 35, p. 473

56. Liberty to a mortgagee, pending a winding up, to institute a suit for foreclosure refused, there being no special difficulty, and it being competent to him to obtain the proper order in Chambers without the necessity of a suit. *In re St. Cuthbert Lead Smelting Company.* vol. 35, p. 384

57. The words "just and equitable that the company should be wound up" in the

5th rule of the 79th section of "The Companies Act, 1862," are to be considered *ejusdem generis* with the four prior rules. *In re The Anglo-Greek Steam Navigation and Trading Company (Limited).* vol. 35, p. 399

58. Shareholders, who appear to support or resist a petition to wind up a company, do so at their own cost, unless a personal charge is made against them; in which case, the director or member assailed is entitled to appear separately, and to his costs from the petitioner if the case fails. *Ibid.*

59. If it were established that a company never had any proper foundation, and that it was a mere fraud or bubble company, the Court would order it to be wound up. *Ibid.*

60. Misconduct of directors and manager towards the shareholders, though a ground for relief by suit, is not, until such mismanagement has produced insolvency, a ground for winding up the company. *Ibid.*

61. The first appearance of the advertisement to wind up a company determines the position of all the shareholders, but up to that time it is open to them to deal exactly as if the company were not about to be wound up, provided the transaction be *bonâ fide*. *In re London, Hamburg, &c. Bank; Emmerson's case; Toombs' case.* vol. 35, p. 518

62. *A.* sold shares in a company to *B.*, both being ignorant at the time that a petition had been presented to wind up the company, and upon which an order was subsequently made:—Held, that notwithstanding the 84th and 114th sections of "The Companies Act, 1862," there was a valid and binding sale. *Ibid.*

63. Under the above circumstances the Master of the Rolls held that he had authority under that act to deal with the case, and he placed the purchaser on the list in lieu of the vendor, whose name had remained on the register. The Lords Justices concurred in thinking that the Court had such authority, but held that the circumstances were such that the Court could not specifically perform the contract. *Ibid.*

64. Practice as to appointing provisional liquidators. *Ibid.*

65. Upon a petition to wind up a company, a provisional liquidator was appointed prior to its being heard. Held, that the provisional liquidator was not entitled to appear at the hearing (though served), and his costs were refused. *In re The General International Agency Company (Limited).* vol. 36, p. 1

66. Upon two petitions of shareholders of a company, one praying for a voluntary winding-up under the supervision of the Court, and the other for a compulsory winding-up, the Court, being unable to ascertain the wishes of the shareholders, ordered a voluntary winding-up under the supervision of the Court, but directed that any shareholder should be at liberty to inspect the books and accounts, and have liberty to apply to the Court touching the matter. *Ibid.*

WINE.

A wine merchant possessed of a large stock of wine, by his will gave all his household goods, &c., and everything he died possessed of, to his wife for life, and he bequeathed the whole of his effects that might be remaining after her death to his daughter. Held, that the wife took absolutely the wine which the testator had for his private use, but a life interest only in the rest. *Phillips* v. *Beal.* (No. 1.) vol. 32, p. 25

WITHOUT PREJUDICE.

1. Where letters are written "without prejudice," with a view to a compromise, they cannot be given in evidence. *Hoghton* v. *Hoghton.* vol. 15, p. 278

2. Letters written "without prejudice" cannot be used in evidence of admissions. The practice of attempting to do so disapproved of. *Jones* v. *Foxall.* vol. 15, p. 288

WITNESS.

[*See* EVIDENCE, WITNESS (COMPETENCY), WITNESS (COSTS), WITNESS (CROSS-EXAMINATION), WITNESS (DE BENE ESSE), WITNESS (DEMURRER).]

1. A solicitor may communicate with a witness before his examination, and take down in writing what he can depose to, but to prepare the depositions of a witness beforehand would be improper, and form a ground for suppressing the depositions. *Sayer* v. *Wagstaff.* vol. 5, p. 462

2. The veracity, or even accuracy, of an ignorant and illiterate person, is not to be conclusively tested by comparing an affidavit made by him, with his *vivâ voce* testimony; discrepancies between them is not conclusive against his testimony. *Johnston* v. *Todd.* vol. 5, p. 597

3. Observations on the value of testimony given by affidavit. When the witness is illiterate and ignorant, the language is not his own, but that of the person preparing the affidavit; being taken *ex parte*, it is almost always incomplete, and often inaccurate. *Ibid.*

4. Solicitors are justified in obtaining from a witness, prior to his examination, a statement of the facts, but it is improper

to obtain a statement upon oath, unless required for the purposes of the cause. *Harvey* v. *Mount.* vol. 8, p. 439

5. Motion, after publication, to prove an affidavit in another cause made by a witness examined in this, and tending to discredit him, refused. *Gregory* v. *Marychurch.* vol. 12, p. 275

WITNESS (COMPETENCY).

1. The obligee of a bond bequeathed it to *A. B.*: Held, in a suit by the legatee against the executor, that the obligor was an incompetent witness to prove that the bond was, under the circumstances, irrecoverable against him, and that he was not rendered competent by the 3 & 4 *Will.* 4, c. 42, ss. 26, 27. *Davies* v. *Morgan.* vol. 1, p. 405

2. In a suit by the assignee under the Insolvent Debtors Act, to recover some property for the benefit of the estate, a creditor of the insolvent is not a competent witness on behalf of the Plaintiff: and he is not rendered competent by the 3 & 4 *Will.* 4, c. 42, ss. 26, 27. *Holden* v. *Hearn.* vol. 1, p. 445

3. Cross-examination of a witness in equity, to prove exhibits held no waiver of objection to his competency on the ground of interest; but *semble*, that the proposition is not true that a witness may be cross-examined to any extent and for any purpose, without waiving the objection to his competency on the ground of interest. *Frank* v. *Mainwaring.* vol. 2, p. 127

4. In a suit to set aside deeds, on the ground that their execution had been procured from a person while a lunatic, a trustee, who was alleged to have assisted in procuring their execution, though for no personal advantage, was held an incompetent witness on behalf of the parties taking beneficially under the deeds. Held also, that the wife of the trustee was equally incompetent. *Ibid.*

5. A husband cannot be examined as a witness against his wife, in a suit affecting her separate estate, although there are other Defendants in respect of whom he would be competent. *Langley* v. *Fisher.* vol. 5, p. 443

6. *A.* sued *B.* to recover from him his share in the loss of a joint speculation, in which *A.* alleged that *A.*, *B.*, *C.* and *D.* had been engaged. *A.* had settled with *C.* and *D.*, who were nevertheless made Defendants. Held (independently of the statute 6 & 7 *Vict.* c. 85), that *C.*, who had been released by the Plaintiff, and disclaimed all right against the Plaintiff and Co-Defendants, was a competent witness to prove that *B.* had been engaged in the speculation. *Hills* v. *Nash.* vol. 10, p. 308

7. The evidence of a Defendant in favour of a Co-Defendant is inadmissible under the 6 & 7 *Vict.* c. 85, if it proves the case of the witness himself. *Triston* v. *Hardey.* vol. 14, p. 21

8. Observation, that the interest of a witness is apt to mislead his recollection. *Griesbach* v. *Fremantle.* vol. 17, p. 314

9. A guardian is not disabled from being a witness to the execution of the deed by which he is appointed. *Morgan* v. *Hatchell.* vol. 19, p. 86

10. The testimony of a claimant alone cannot be acted on, unless there be some corroborative evidence. *Parish* v. *Parish.* vol. 32, p. 207

11. The Court will not act upon the unsupported testimony of a claimant upon the estate of a deceased person. *Grant* v. *Grant.* vol. 34, p. 623

WITNESS (COSTS).

1. Defendant examined as a witness entitled to his costs of suit. *Young* v. *English.* vol. 7, p. 10

2. A witness is not bound to attend the examiner, unless the reasonable expenses of his journey, &c. have been tendered to him, or where an insufficient tender has been made. *Brocas* v. *Lloyd.* vol. 23, p. 129

3. A Plaintiff had required the attendance of a Defendant to be cross-examined on his affidavit. He attended, but it was held that he was entitled to his expenses as a witness. The Plaintiff then abandoned this course of proceeding, and filed interrogatories for the Defendant's examination. Held, that this could not be done until the costs of the former proceeding had been paid. *Davey* v. *Durrant.* vol. 24, p. 411

4. Whether, when a party is ordered to pay the costs of suit, it is necessary to specify the costs of a cross-examination in Court under the 19th General Order of *Feb.* 1861, *quære.* *Hunt* v. *Pullen.* vol. 34, p. 301

WITNESS (CROSS-EXAMINATION).

1. New commission granted to cross-examine Plaintiff's witnesses abroad, upon subsequent discovery of matter material for such examination; but held that the Plaintiff could only be allowed to re-examine on a special case being made, and then only as to matters not comprised in the former interrogatories.

Form of the order in such cases. *King of Hanover* v. *Wheatley.* vol. 4, p. 78

2. An order of course, obtained under the old practice by the Plaintiff to examine a Defendant against whom a replication

had been filed, was irregular. *Holmes* v. *Corporation of Arundel.* vol. 4, p. 155

3. Application to the Court to examine, on behalf of the Plaintiff, a Defendant, to whose answer a replication had been filed, refused. *Baker* v. *Thurnall.* vol. 6, p. 333

4. Old practice of exhibiting interrogatories for the examination of witnesses. *Harvey* v. *Mount.* vol. 7, p. 157

5. Previous to a cause being at issue, the Plaintiff's solicitor prevailed on *A. B.* to make a voluntary affidavit, not required by the proceedings in the cause. *A. B.* was afterwards examined as a witness on behalf of the Defendant, and was cross-examined by the Plaintiff; her affidavit and depositions were contradictory, but the affidavit was not produced to her at the time of her examination. Upon an application by the Plaintiff to file articles and examine witnesses to discredit *A. B.*: Held, that though the conduct of the Plaintiff's solicitor had been highly improper, still the motion ought to be granted, leave being given to the Defendant to examine witnesses to support her credit, and as to the circumstances under which the affidavit had been sworn. *Ibid.*

6. Under the old practice of examination on interrogatories new interrogatories might not be introduced without leave. *Earl Nelson* v. *Lord Bridport.* vol. 7, p. 195
(*King of Hanover* v. *Wheatley.* vol. 4, p. 78
But see *Lancashire* v. *Lancashire.* vol. 4, p. 26)

7. Liberty given to a person not a party to the suit, but who claimed as next of kin, upon an inquiry before the Master to examine a witness who had already been examined in the cause. *Clark* v. *Hall.* vol. 8, p. 395

8. Application for leave to exhibit interrogatories in the Master's office, for the examination of an executor, the object being to charge him with a breach of trust not raised by the pleadings, refused with costs. *Ford* v. *Bryant.* vol. 9, p. 410

9. Under a common decree against an executor to take the accounts, the executor was interrogated as to two specified sums, and he fully answered. A new set of interrogatories were exhibited with a view of throwing discredit on this answer. Held, that the Master was wrong in allowing them. *Suckermore* v. *Dimes.* vol. 9, p. 518

10. An order might regularly be obtained as of course after publication for the examination of witnesses as to credit. *Penny* v. *Watts.* vol. 11, p. 298

11. It is not necessary that in such an order the examination should be limited to matters not in issue in the cause; for if they extend further, the depositions would be suppressed. *Ibid.*

12. Interrogatories for the examination of witnesses held not leading, but the Court reserved to the Defendant the right to object to the depositions at the hearing. *Gregory* v. *Marychurch.* vol. 12, p. 398

13. The cross-examination of a Defendant, tendered as a witness, is a waiver of his incompetency, where the objection must be assumed to have been known at the time of the cross-examination. *Triston* v. *Hardey.* vol. 14, p. 21

14. Application under the Chancery Improvement Acts (1852) to examine a Defendant *viâ voce* in the Master's office refused, the decree having directed the examination upon interrogatories. *Routh* v. *Tomlinson.* vol. 16, p. 251
(See *Wood* v. *Homfray.* vol. 14, p. 7)

15. Affidavits in support of a motion for a decree, are open to the Defendant's cross-examination. *Williams* v. *Williams.* vol. 17, p. 156

16. A motion for an injunction was ordered to stand over, with liberty to bring an action. Held, that a witness who had made an affidavit on the occasion, might, afterwards, and before the trial, be cross-examined under the 15 & 16 *Vict.* c. 86, s. 40. *Lloyd* v. *Whitty.* vol. 19, p. 57

17. A Plaintiff who has required a Defendant to make an affidavit as to the possession of documents, under the 15 & 16 *Vict.* c. 86, s. 18, was allowed to compel the Defendant to be cross-examined on such affidavit. *Kay* v. *Smith.* vol. 20, p. 566

18. On a motion for a decree, the answer is an affidavit, and the Defendant may be cross-examined on it. *Wightman* v. *Wheelton.* vol. 23, p. 397

19. No weight is to be attached to an affidavit where the opposite party has had no opportunity to cross-examine the witness. *Ibid.*

20. On a motion for an injunction, the Plaintiff, who has compulsorily obtained an answer, cannot cross-examine the Defendant on it, unless it is to be used on the Defendant's behalf. *Ibid.*

21. An affidavit was made in favour of the Plaintiff, who, after a long delay, filed it after the death of the witness, whereby no cross-examination could be had. A motion to take it off the file was refused, though the Court intimated that it would have less weight. *Abadom* v. *Abadom.* vol. 24, p. 243

22. A Plaintiff had required the attendance of a Defendant to be cross-examined on his affidavit. He attended, but it was held that he was entitled to his expenses as a witness. The Plaintiff then abandoned this course of proceeding, and filed interrogatories for the Defendant's exami-

nation. Held, that this could not be done until the costs of the former proceeding had been paid. *Davey* v. *Durrant*. vol. 24, p. 411

23. A party to a cause, upon being cross-examined on his affidavit, is entitled to be paid his reasonable expenses by the party cross-examining him, in the same way as a witness under the 15 & 16 *Vict.* c. 86, s. 38. *Davey* v. *Durrant*. vol. 24, p. 493

24. On a motion for a decree the Plaintiff's affidavit in reply was filed on the 4th of *August*. The Defendant took no steps to cross-examine until after the Long Vacation, and he then asked, that the cause might stand over, to enable him to cross-examine the Plaintiff. Held, that he was not entitled as of right, and that it was matter of discretion, and the Court having heard the cause, and seeing no necessity for a cross-examination, made a decree. *Bourdillon* v. *Baddeley*. vol. 26, p. 255

25. On a notice of motion for a decree, the Plaintiff had given notice to use the answers of some of the Defendants. Held, that he might cross-examine those Defendants on their answers, without prejudice to the right of the other Defendants to object to the cross-examination being used against them. But held also, that the Plaintiff could not examine, in chief, other witnesses not mentioned in his notice of motion for a decree. *Rehden* v. *Wesley*. vol. 26, p. 432

26. Where a witness objects to answer, on the ground that he may subject himself to penalties, he must, in many instances, be the only one to determine on his liability; but when the facts disclosed raise a point of law as to his liability, the Court must decide it. *Re The Mexican and South American Company*. vol. 27, p. 474

27. The forty-eight hours' notice required by the 22nd General Order of the 5th of *February*, 1861, applies to "the opposite party," and not to a witness who is bound to attend to be examined after reasonable notice. *Re North Wheal Exmouth Mining Company*. vol. 31, p. 628

28. Liberty given to read the affidavit of a witness, who had been prevented, by illness, from being cross-examined, but the Court intimated that little attention would be paid to such an affidavit. *Braithwaite* v. *Kearns*. vol. 34, p. 202

29. Liberty given under the 19th General Order of *February*, 1861, to use the affidavits of persons who, by death and lunacy, could not be cross-examined, saving just exceptions. *Ridley* v. *Ridley*. vol. 34, p. 329

30. A witness made an affidavit and died four days afterwards, and before she could be cross-examined. Her evidence was admitted at the hearing. *Davies* v. *Otty*. vol. 35, p. 208

WITNESS (DE BENE ESSE).

[*See* EVIDENCE (DE BENE ESSE).]

1. An application for an order to examine a witness *de bene esse*, on the ground that he is the only witness to a material fact, ought to be made upon notice, and not *ex parte*. *Hope* v. *Hope*. vol. 3, p. 317

2. The affidavit in support of an application to examine a witness *de bene esse*, ought to shew the facts on which it is proposed to examine the witness. *Ibid.*

3. An affidavit in support of such an application on belief only, that the witness is the sole witness to a particular fact, is not sufficient: it ought to state the reasons for such belief. *Ibid.*

WITNESS (DEMURRER).

1. A husband cannot be examined as a witness against his wife in a suit affecting her separate estate, although there are other Defendants in respect of whom he would be competent; and the proper mode of taking the objection is by demurring to the interrogatories. *Langley* v. *Fisher*. vol. 5, p. 443

2. The costs of a demurrer of a witness follow the rule of ordinary demurrers. *Ibid.*

WORDS (MEANING OF).

[*See* CONSTRUCTION, DESCRIPTION OF GIFT.]

1. A testator having three places of residence at *A.*, *B.* and *C.*, bequeathed the one at *A.* to his nephew; and also "all his carriages, horses, implements and his live and dead stock and chattels" in and about the house and premises at *A.*; "and also his household goods and furniture, pictures, plate, linen, china, liquors of all sorts and brewing vessels, and likewise his watches and personal ornaments:" Held, that the household goods, furniture, &c. at *B.* and *C.* passed by the bequest;—but whether a bust would pass under the latter words, *quære*. *Willis* v. *Curtois*. vol. 1, p. 189

2. Manuscript notes of a physician of his attendance on a patient, and which were bound up in volumes, Held to pass under a bequest of "all and every my books in and about my house" at *A.* *Ibid.*

3. A pocket-book and a case of instruments, usually carried about the person of a testator, Held not to pass under the words "personal ornaments;"—but whether a gold pencil-case, toothpick case, lip-salve box and eye-glass, similarly circumstanced, would pass, *quære*. *Ibid.*

4. Generally, *choses in action* do not pass by a bequest of "goods and chattels," in a particular locality. *The Marquis of Hertford* v. *Lord Lowther*. vol. 7, p. 1

5. *Polish* bonds and *Neapolitan* bordereaux held not to pass by a bequest of "goods

and chattels, money at the banker's, &c. at *M.*" *The Marquis of Hertford* v. *Lord Lowther.* vol. 7, p. 1

6. "Effects" held to be *ejusdem generis*, and not to apply to real estate. *Cross* v. *Wilks.* vol. 35, p. 562

WRIT.

[*See* PROHIBITION.]

WRONGDOER APPLYING.

Misconduct on the part of the person applying will not prevent the Court setting aside the award, for the matter concerns the due administration of justice. *Re Tidswell.* vol. 33, p. 213

YOUNGER CHILD.

1. Bequest to a daughter's "younger children," held to mean the children other than the eldest in age, and therefore to exclude the eldest child, a daughter, and to include her younger brother, though, under his parents' marriage settlement, the family estates stood settled on him. *Lyddon* v. *Ellison.* vol. 19, p. 565

2. *A. B.*, on his marriage, settled real estates on himself for life, then to trustees for a term to raise portions for his younger children, and, subject thereto, to his first and other sons in tail. The portions were to vest in sons at twenty-one, but to be payable after the decease of the husband and wife. *George*, the second son, attained twenty-one, after which *William*, the eldest son, having barred the entail, died without issue, and, subsequently, the portions became payable. Held, that *George*, though the eldest at the period of distribution, was entitled to a share of portions for younger children. *Adams* v. *Beck.* vol. 25, p. 648

3. The character of "eldest son" is, in ordinary cases, to be ascertained at the period of vesting, and not of payment. *Ibid.*

4. Bequest to *A.* for life, and afterwards in trust for her children who, not being an eldest or only son, should attain twenty-one. In 1854, after *George*, the second son, had attained twenty-one, the eldest son died, and the second thereupon became eldest. The tenant for life died in 1857. Held, that *George*, though an eldest son at the time the fund became payable to the children, took a share. *Adams* v. *Adams.* vol. 25, p. 652

5. Under a trust for *A.* for life, "and after her decease, to be divided equally between her younger children:" Held, that the character of "younger child" was to be determined at the period of vesting, and not at that of distribution. *Adams* v. *Roberts.* vol. 25, p. 658

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