

DIGEST OF ENGLISH LAW REPORTS.

court could not give it validity as an appointment.—*Garth v. Townsend*, Law Rep. 7 Eq. 220.

2. By a marriage settlement, a fund was settled on such trusts as the wife should by will appoint, and, in default of appointment, in trust for such persons as should, at the death of the survivor of the husband and wife, be the next of kin of the wife. By her will, purporting to exercise the power, the wife gave all her property to her executors therein named, and gave several legacies which did not exhaust the fund. She died in her husband's lifetime. *Held*, that the fund was by the appointment all converted into the wife's general personal estate, and that the surplus, after paying legacies, belonged to her husband and not to those entitled under the settlement in default of appointment.—*Brickenden v. Williams*, Law Rep. 7 Eq. 310.

3. A. devised his estate to B. for life, without impeachment of waste, and then to B.'s issue, and in default of issue over. The will gave B., or any person in possession under the limitations of the will, power to work or to lease the mines. B. was to pay over to trustees the rents and profits of the mines, and with them B. was to buy, with the consent of the trustees, other estates, of which she was to receive the rents during her life. While in possession, B. made a lease for sixty years. *Held*, that the lease was not warranted by the power, for that on the whole will it appeared that A. intended to restrict B. to making a lease for her life only.—*Vivian v. Jegon*, Law Rep. 3 H. L. 285.

4. A settlement contained, among other things, a power for B., in case of the death of his first wife and his marrying again, to charge the estates with portions for the younger children of his second marriage, the amounts to be greater or less, according to the number of children of the first marriage. The deed provided that if the brothers of B. should respectively, come into possession of the estate, "either before or after their marriage with any woman or women," they might charge the estate with "the like sum or sums of money for the portion or portions of their child or children (other than an eldest son), as B. is entitled to do before or after his marriage with any woman or women after the death of his first wife." *Held* (Lord CRANWORTH, *dubitante*), that this was an absolute power which, with reference to a younger brother of B. succeeding to the estate, was not subject to the restrictions and contingen-

cies which applied to B.—*Earl of Harrington v. Countess (Dowager) of Harrington*, Law Rep. 3 H. L. 295.

See CONVERSION; ELECTION, 1; HUSBAND AND WIFE, 4; MORTGAGE, 3.

PRACTICE—See COSTS; EQUITY PLEADING AND PRACTICE; INTERROGATORIES.

PRESCRIPTION.

The owner of a several fishery in a navigable and tidal river claimed a right to use stop-nets to catch fish. The nets had been in use for forty-five years up to 1862; there was no evidence of previous user, nor was there any evidence to the contrary. *Held*, that the user for forty-five years did not raise a conclusive presumption of law that the nets had been used from time immemorial.—*Holford v. George*, Law Rep. 3 Q. B. 639.

See LANDLORD AND TENANT, 4; LIGHT; NAVIGABLE WATERS.

PRESUMPTION.

By an indenture dated 1598, a farm was demised for 1,000 years, with a covenant by the lessor to convey the fee to the lessee within five years if required. The farm was assigned as leasehold in 1777, since which time it had been three times devised as freehold, and on the court rolls of the manor, of which the farm formed part, the land was called freehold. *Held* (reversing the decision of the Master of the Rolls), that the farm remained leasehold as between the heir and administrator of an intestate owner.—*Pickell v. Packham*, Law Rep. 4 Ch. 190.

See PRESCRIPTION; WILL, 3.

PRINCIPAL AND AGENT—See BILLS AND NOTES, 2; FACTOR; SALE, 1.

PRINCIPAL AND SURETY.

1. A surety on a bond to secure a debt was secured by another bond of indemnity against all sums he might be called on to pay as such surety. This second bond was given by one A., who had died, having by will devised certain property specifically on trust to pay the debt. The creditor having applied to the surety, the surety had recourse to A.'s executors, who said that they had no funds, and were unable, under the will, to raise money by sale of A.'s estate without a decree of the court. *Held*, that though the surety had paid nothing, yet he could maintain a bill against the executors for administration, payment of the debt, and indemnity; and also that the bill need not be filed on behalf of all the creditors of A.—*Wooldridge v. Norris*, Law Rep. 6 Eq. 410.

2. A third party joined in a mortgage as