

REVIEW OF CURRENT ENGLISH CASES.

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PAYMENT INTO COURT WITHOUT DENIAL OF LIABILITY—LIBEL—
DEATH OF PLAINTIFF—ABATEMENT OF ACTION—RIGHT TO
MONEY PAID AS SATISFACTION.

Maxwell v. Wolessley (1907) 1 K.B. 274 was an action of libel in which the defendant paid into Court fifty guineas in satisfaction and pleaded an apology. The plaintiff did not take the money out of Court, and died before trial. The defendant applied for repayment of the money to him and his application was opposed by the executor of the plaintiff who also claimed that the money should be paid to him. The reporter notes that no technical objection was taken to the application of the executor. Bray, J., decided that the executor of the plaintiff was entitled to the money and ordered it to be paid to him, and his order was affirmed by the Court of Appeal (Collins, M.R., and Farwell, L.J.). It would have been interesting as a matter of practice to know what would have been the decision of the Court if the defendant had taken the objection that the executor could not intervene without first reviving the action, and that it was not competent for him to revive and make himself a party because the cause of action was one which did not survive. It might probably have been deemed a good answer to say that quoad the money paid into Court the executor was entitled to revive.

RESTITUTION OF CONJUGAL RIGHTS—SEPARATION DEED—COVENANT NOT TO SUE FOR RESTITUTION—BREACH OF COVENANT FOR MAINTENANCE OF WIFE.

Kennedy v. Kennedy (1907) P. 49 was a petition by a wife for restitution of conjugal rights. A deed of separation had been made between the parties which contained a covenant on the part of the husband to pay a third part of his earnings, and a covenant on the wife's part not to sue for restitution of conjugal rights. The husband had broken his covenant, and the question Barnes, P.P.D., was asked to solve was whether the existence of the covenant not to sue on the wife's part was a bar to her application, and he held that it was not and that "the