the Constitution, that he could be deprived of the solid acres granted to him by the Commonwealth

His dam must not obstruct the navigation of the fish, because he took title from the Commonwealth subject to that servitude or public right—one of the ancient English "liberties" which Magna Charta rescued from oblivion—which numerous old statutes, in the times of Henry IV. and the Edwards, defined and defended—which the immigrants brought over with them, and which Penn expressly recognized in the 22nd Sect of his first frame of Government, adopted in 1683—and which became, in this manner, an indefeasible condition of Pennsylvania tenures The Mill-dam Act of 1803, was a fuller provision for the regulation of this public right, and supplied a statutory remedy for its infringment, but was not a *license* to Ingham to build on his own land. When he improved his water-power, he did it, not as tenant at will, under a revocable license, but on the sure footing of that dominion which an owner exercises over soil that he holds, in fee simple, from his sovereign. This conceit, that the Commonwealth granted a license in 1803 to build on land she sold and was paid for before 1786, may lead very logically to the conclusion that it was competent for the Commonwealth to revoke the license in 1803 and grant to the Railroad Co the right to destroy Ingham's water-power, without compensation, but it is only a conceit after all, and can afford no solid basis for the conclusion claimed. It may be harmless if not strictly correct language to speak of the Act of 1803 as licensing riparian owners along our "principal" rivers to use water-power which, never having been granted to a citizen, belongs to the State as a sovereign, but when applied to such streams as the Towanda creek, which having been granted by the sovereign, are private property, it is false language, and it begets false ideas. If it were, indeed so, that the Act of 1803 makes every mill owner along these lesser streams a mere tenant at will, it would be palpably unconstitutional; but regarded as an act for the regulation and defence of a supervening common law right of the public, subject to which the mill owner bought and has always held his land and water-power, it is constitutional and wholesome legislation

For these reasons we are of opinion that the main proposition in the defendants' first point was correctly denied, and the judgment is reversed only because of the rejection of the evidence mentioned in the first bill of exceptions.

Judgment reversed and a *venire facias de novo* awarded.

## MONTHLY REPERTORY.

### CHANCERY.

M. R. FRANKS v. BROOKER. *Jan.* 25.

*Will—Legacy—Ambiguity.*

Testator bequeathed a certain sum of money to trustees in trust for his daughter E for her separate use independent of her husband, and after the decease of E to her husband for his life with remainder to all and every the children of E. by her present or any future husband.

After testator's decease E's husband died and she married again. E. died leaving her second husband her surviving On bill filed by second husband against trustee of the will. *Held*, that the benefit of the gift was confined to the husband living at the date of the will and the death of the testator.

V. C. K. DAVIES v. BOULCOTT. *Jan.* 25.

*Practice—Appointment of representative.*

Where a decree for sale has been made of an insolvent estate, and the legatees have disclaimed, the executors renounced, and an administrator *ad litem* is dead, the court will *ex parte* on motion appoint a personal representative on production of an affidavit as to the insolvency of the estate and notice to the parties entitled to administer.

V. C. K. FORWARD v. EDGINTON. *Jan* 27, 31.

*Assignment—Priority—Notice—Husband and wife.*

Where a husband in right of his wife who is one of the representatives of an intestates' estate assigns his share in the estate for value, and becomes insolvent, notice to the wife, if proved is not notice to both the representatives, a wife being under the dominion of her husband has constructive notice of his acts.

The principle applicable to a trustee who is also a *cestui que trust* and assignor of a fund applies also to a *feme covert* on the question of notice.

V. C. W. DRUMMOND v TRACY. *Jan* 30.

*Judgment—Power of sale—Executor—Abstract of title.*

Real and personal estate was given by the testator's will to A. one of his daughters and his sole executrix upon trust to sell and convert (with power nevertheless to suspend such sale for such period as she should think fit) and stand possessed of the clear moneys arising from such sale in trust for the testators three daughters A. B and C it being declared that A's receipt should be a good discharge to purchasers

After the testator's death, A. married and with the concurrence of her husband caused the real estate to be sold by auction E. becoming the purchaser. Shortly after the contract for sale but *before the completion of the purchase judgments were entered up* against A's husband to an amount far exceeding the purchase money. Upon the refusal of E. to complete his purchase until the judgments had been satisfied, specific performance decreed with costs, the court holding that the judgment creditor could not interfere with the sale out of the proceeds of which no beneficial interest accrued to A and the other *cestui que* trusts, until the testators debts, &c, had been discharged and his estate administered.

Although it may not be necessary to insert upon the abstract the particulars of an equitable charge which has been already paid off, the fact of such a charge having effected the property should not be concealed from the purchaser.

V C. W. MITCHELL v. COLLS. *Jan.* 30.

*Settlement—Construction—"Unmarried"—next of kin of wife.*

By the settlement made upon the marriage between A. and B. a sum of stock was settled to the separate use of B (the wife) for her life with trusts after her death as to one moiety for children of the marriage as to the other moiety for the husband for his life after his death upon the same trusts as had been declared of the first moiety. In default of children taking vested interests (attaining 21 or dying under that age leaving issue) upon trust as to the whole for the husband for life and after his death according to the appointment of B; and in default of such appointment upon trust for the person or persons who at the death of B. should be of her blood and in kin to her and would have been entitled under the statute of disiributions "in case B. had died possessed thereof intestate and unmarried."

B. died in child birth, leaving an infant daughter who survived one day only.

*Held*, that the infant daughter was entitled under the ultimate limitations in default of appointment as B's next of kin under the statute of distributions.

L. C PARISH v SLEEMAN. *Feb.* 11.

*Landlord and tenant—"All outgoings."*

Agreement between landlord and tenant for the lease of a farm for a term of years at a yearly rent "free of all out goings"

*Held, that the word "out goings" included the land tax and* title commutation rent charge.

L. J. NELSON v. SEAMAN. *Feb.* 24.

*Practice—Parties—Trustee of an equity.*

A fund was paid into court by the executors of a deceased trustee A *cestui que* trust appointed new trustees under a power in the settlement, but the property was not assigned to them or transferred into their names. An incumbrancer filed a bill to secure the fund to which he made the executors parties.

*Held*, that the new trustees were also necessary parties.