

RECENT ENGLISH DECISIONS.

v. Bryan, 8 C. B. 115, and *Armstrong v. Lancashire and Yorkshire Railway Co.*, L. R. 10 Ex. 47, were overruled.

The law bearing on the question is thus summarized by Lord Esher, M.R., at p. 61:

(1) If no fault can be attributed to the plaintiff, and there is negligence by the defendant, and also by another independent person, both negligences partly directly causing the accident, the plaintiff can maintain an action for all the damages occasioned to him against either the defendant or the other wrongdoer. (2) If in the same case the negligence is partly that of the defendant personally, and partly that of his servants, the plaintiff can maintain an action either against the defendant or his servants. (3) If in the same case the negligence is that of the defendant's servants, though there be no personal negligence by the defendant, the plaintiff can maintain an action either against the defendant or his servants. (4) If in the same case the negligence, though not that of the defendant personally or of a servant of the defendant, consists in an act or omission by another, done or omitted to be done in the way in which it is done or omitted to be done by the order or direction or authority of the defendant, the plaintiff can maintain an action either against the defendant or the person personally guilty of the negligence. (5) If, although the plaintiff has himself or by his servants been guilty of negligence, such negligence did not directly partly cause the accident; as if, for example, the plaintiff or his servants having been negligent, the alleged wrongdoers might by reasonable care have avoided the accident, the plaintiff can maintain the action against the defendant. (6) If the plaintiff has been personally guilty of negligence which has partly directly caused the accident, he cannot maintain an action against any one. (7) If, although the plaintiff has not been personally guilty of negligence, his servants have been guilty of negligence which has partly directly caused the accident, the plaintiff cannot maintain an action against any one. (8) If, although the defendant or his servants has or have been guilty of negligence, the plaintiff or his servants could by reasonable care have avoided the accident, the plaintiff cannot maintain an action against any one.

At p. 82 he adds:

That the propositions above stated contain the law on this matter, perhaps not exhaustively, and that the proposition contained in *Thorogood v. Bryan* is not to be added to them.

EVIDENCE—LETTERS OF ADMINISTRATION—DECLARATION OF DECEASED PARENT.

In the goods of *Thompson*, 12 P. D. 100, upon an application for letters of administration to the estate of a deceased child, the court allowed the birth and death of the child to be proved by evidence of declarations of its deceased mother.

PRACTICE—THIRD PARTY OBTAINING LEAVE TO DEFEND—DISCOVERY.

Turning now to the cases in the Chancery Division, the first to be noted is *Eden v. Wear-*

dale Iron Co., 34 Ch. D. 223, in which the Court of Appeal (affirming Kay, J., and following *McAllister v. Bishop of Rochester*, 5 C. P. D. 194) held that when a third party obtains an order directing that the question of indemnity between him and the defendant should be tried after the trial of the action, and giving him liberty to appear at the trial and oppose the plaintiff's claim so far as he was affected thereby, and to put in evidence, and cross-examine witnesses, that he was liable himself to be examined by the plaintiff before trial for the purpose of discovery.

MARRIED WOMEN'S PROPERTY ACT, 1882, ss. 5, 19
(47 VICT. c. 19, ss. 5, 17 [O.]).

In *Re Whitaker, Christian v. Whitaker*, 34 Chy. D. 227, the Court of Appeal expound the Married Women's Property Act, 1882, ss. 5, 19, from which 47 Vict. c. 19, ss. 5, 17 (O.), is adapted. By ante nuptial settlement of 1873 a husband and wife covenanted to settle after acquired property of the wife, other than personal chattels, savings out of her separate income, or any moneys not exceeding in each case £1,000; "or any property belonging, or which may be given or bequeathed to, or settled upon her for her separate use, all which excepted articles and property shall belong to the said wife, and shall or may be used, enjoyed, and disposed of by her accordingly as if she were not under coverture." Under the will of the wife's father, made in 1884, the wife became entitled to a share of personalty exceeding £1,000, and not limited to her separate use. It was contended that the effect of sec. 5 of the Act of 1882 was to make this bequest the wife's separate property, and that therefore it was not subject to the covenant for settlement. But the Court of Appeal held that the effect of sec. 19 (47 Vict. c. 19, s. 17 O.) was to limit the operation of sec. 5 by preventing property which would, independently of the Act, have been subject to the trusts of a marriage settlement, from becoming separate property, and therefore the property in question was bound by the covenant.

LIFE POLICY—PAYMENT OF PREMIUM BY PERSON NOT ENTITLED—LIEN—SALVAGE.

In *Falcke v. Scottish Imperial Insurance Co.*, 34 Chy. D. 234, an attempt was made to establish a claim to a lien on a life policy for