Replevin—Non tenuit—What can be given in evidence under plea of—Fraudulent conveyance—Landlord and tenant—Distress.

It is competent for an assignee of an insolvent, in an action brought to replevy goods distrained for rent, to show, under the plea of *non tenuit*, that the premises occupied by the insolvent, and for which the defendant claims rent, were conveyed by the insolvent to defendant, to defraud his creditors, and such fraud being shown, the relation of landlord and tenant would not exist between them so as to give effect to the conveyance as against the creditors.—*McLeod* v. *McGuirk*. 238.

Trustee — Revocation of authority of — Where binding arrangement made before revocation.

F. died in the latter part of August, 1870, intestate, having his life insured in the sum of $6000, "to be paid to E. (the plaintiff) his wife, if she should survive him ; if not, to the children of the assured, or their legal representatives." On the 13th September following, plaintiff gave defendant, in writing, authority to collect the insurance and use it for the purpose of paying the debts of her husband. Subsequently, on the 16th September, defendant not being satisfied with the previous authority, procured a deed poll, whereby the plaintiff assigned the policies to him in trust for payment of the balance of the debts due by F., or for the purchase of such debts, and for the payment of the remainder to plaintiff. Two creditors were about taking steps to attach the policies in the United States, when, being informed by the defendant of the assignment, they, at his request, took no further proceedings. On the 30th March, 1872, and before defendant had paid over any money in pursuance of the deed, plaintiff signed a revocation, and, through her solicitor, made a demand from the defendant of the amount received on the policies. Notwithstanding this, defendant distributed among the creditors what was necessary to discharge their claims. The plaintiff having sued defendant for the whole sum received from the Insurance Company,

Held, 1. That it was competent for the plaintiff to revoke the authority given to defendant so long as he had neither parted with the fund or entered into any binding obligation with the parties to whom the money was to be paid.

2. That, as there was no debt due from plaintiff to the creditors of her husband, nor any obligation on her part to discharge his indebtedness, the fact of defendant having communicated to F.'s creditors the authority to receive and pay over the money would not be sufficient to prevent the plaintiff from changing its disposition by revoking the authority.

3. (Per Ritchie, C. J., and Allen and Weldon, J. J., Wetmore, J., *dissentiente*.) That the engagement entered into with the creditors who were about attaching the policies was binding, and the plaintiff could not recover the amounts paid over to them.—*Frost* v. *Kerr*. 338.

Will — Construction of—Life estate — Power—Covenant—Estoppel—Evidence—Joinder.

K. devised as follows : "I give to my dear wife M. the possession, use and occupation of my moiety of the house in which I now reside, and also my moiety of the upland marsh * * * and also all the plate, linen, goods, chattels and effects, together with all the household furniture of which I shall be possessed at the time of my decease ; as also the rents and profits of all my other personal and real estate whatsoever, whether consisting of land, tenements, goods, chattels, debts, moneys or choses in action, including all that I may own in the world at the time of my death, for the support and maintenance of herself and such of my younger children as shall be living with her and still unmarried. * * * It is further my will that if the rents and profits of my real and personal estate be not sufficient for the maintenance and support of my said wife and younger children, she may from time to time employ such of the principal as may be necessary for that purpose. It is also my will, and I hereby direct that whatever of my real or personal estate may remain after the death of my said wife, and which has not been previously otherwise disposed of in this will, shall be equally divided, share and share alike, between my children."

After the testator's death, M. leased a portion of the property to the defendant, under a demise containing various covenants, for a term which extended beyond M.'s life. M. having died, the defendant refused to perform his covenants, alleging that the lease was determined by her death. In an action brought by the children of K., the remaindermen named in the will,

Held, 1. That M. only took a life estate under the will.

2. That she had the power of sale both of the real and personal estate, and, as included in this, also the power to lease.

3. That while it was open to the defendant to show that M. had only a life estate, by accepting the lease from her, and entering under it, and continuing in possession of the property, he was estopped from disputing that she had title to lease, either because the will did not authorize a lease under any circumstances, or because the power was only to be exercised in case the rents and profits of the property were insufficient for the maintenance of the family.

4. That in an action for rent which accrued due, or for any cause of action which arose after one of the remaindermen conveyed away his interest, he should not be a party.

Evidence of Commissioners of Sewers appointed under Act of Assembly, acting in that capacity, is *prima facie* sufficient.—*Knapp* v. *King*. 309.