land; but that if they do so they cannot compel the defendant to complete the contract. I think that the plaintiffs are entitled at their option either to a decree for specific performance with a covenant including this reserved plot, or to have their bill dismissed. In either case the plaintiff Baskcomb will have to pay the costs of the suit, as the case has, in a great measure, been the consequence of the peculiar manner in which the map and conditions of sale are drawn up. It is of the greatest importance that it should be understood that there should be perfect truth and the fullest disclosures in all cases where specific performance is required; and if this be not so, even if there have been no intentional suppression of facts, the Court will grant relief to the man who has been thereby deceived, provided he has acted throughout reasonably and fairly.

In re Brookman's Trusts.

Will—Marriage articles—Covenant to devise—Interest vested or contingent.

Marriage articles contained a covenant to devise by will certain property to such child or children as should attain twenty-one, and in default, to the wife, her heirs, and administrators. The property was duly devised by the will according to the covenant, with a direction that if there should be no child who should attain a vested interest, the property should go to the next of kin of the wife. There was one child who attained twenty-one and died in the lifetime of the testator.

Held, that the child took a vested interest on attaining twenty-one.

[V. C. M., 17 W. R. 818.]

Articles were executed on the marriage of Mr. and Mrs. Violett by which Thomas Brookman covenanted that if his daughter, Mrs. Violett, survived him, he would devise to trustees a portion of his property for the use of Mr. Violett for life, or until bankruptcy or insolvency; remainder to the use of Mrs. Violett for life; remainder to the use of their children as Mr. and Mrs. Violett, or the survivor of them, should appoint; and, in default of appointment, to the children equally, with the benefit of survivorship in case any died under twenty-one; and, if there should be only one who should attain twenty one, to such child, his or her heirs and assigns; and, if there should be no children, or if all should die under twenty one without leaving issue, to the heirs and administrators of Mrs. Violett.

Thomas Brookman made his will in 1840, and devised the property in accordance with the articles, but the will contained these words,—"In case by reason of the failure of issue of Mrs. Violett there should be no person who under the limitations hereinbefore contained shall attain a vested interest" The testator in that case gave the property to the next of kin of Mrs. Violett at the time of the failure of issue.

One child only attained twenty-one, and died in 1847 intestate. The testator died in 1849. In 1850 Mr. Violett became insolvent. Mrs. Violett died in 1868

The trustees had paid the fund into court under the Trustee Relief Act.

Mrs. Violett's next of kin presented this petition to have the fund paid to them.

Hardy, Q. C, and *Everitt*, for the petitioners, contended that as the child died in the lifetime of the testator its interest was not vested; *Jones* v. *How*, 7 Ha. 267; *Eyre* v. *Monro*, 5 W. R. 870, 3 K. & J. 305; *Kay* v. *Crook*, 5 W. R. 220, 3 Sm. & Giff. 417; *Jones* v. *Martin*, 5 Ves. 265 n.

Glasse, Q. C., and *Jason Smith*, for the assignees of Mr. Violett, who claimed as next of kin of the deceased child, contended that the object of the articles was to provide for the issue of the marriage who took a vested interest. The testator had reserved a power of disposition over the property during his life by deed. There must be a vested interest in the children other than those who survived the testator. Child meant any child of the marriage, not those only who survived the testator. Trusts were declared by the articles in the same way as if a settlement had been executed.

Speed, for the surviving trustee.

Malins, V. C., said he thought the articles bound the testator to leave the property in such a way as that any child or children who attained twenty-one should take a vested interest. This property must therefore be considered to have vested in this child on its attaining twenty-one. The assignees must take out administration to the child's estate, and on so doing are entitled to the fund in court.

Re Phillips (*a Lunatic*).

Lunacy—Practice—Mortgage to lunatic—Re-conveyance—Costs of mortgagor.

Where the committee of a lunatic mortgagee presents a petition that he may be appointed to re-convey the mortgaged estate to the mortgagor, the mortgagor, even though served with the petition, is not entitled to his costs out of the lunatic's estate.

[17 W. R.]

This was a petition in lunacy by Thomas Phillips, the committee of the estate of William Phillips, who was duly found a lunatic by inquisition on the 6th March, 1868

By a report of one of the Masters of Lunacy it was found that the fortune of the lunatic consisted (*inter alia*) of an absolute interest in certain mortgage and other securities.

The mortgages were about to be paid off, and this petition prayed that the petitioner might be appointed to convey the respective mortgaged properties to the respective mortgagors at the expense in each case of the mortgagors

The mortgagors were served with this petition. This petition was heard on the 4th June, when an order was made according to the prayer, and that the costs of all parties should be paid out of the lunatic's estate.

Badnall, for one of the morgagors, now mentioned the matter again to the Court, and stated that, having regard to the authorities, there was some doubt whether the costs of the mortgagors ought to be paid out of the lunatic's estate, even though they had been served with the petition. He referred to *Re Wheeler*, 1 D. M. & G. 434; *Re Biddle*, 23 L. J. Ch. 23.

Giffard, L J., referred to *Re Rowley*, 11 W. R. 297, 1 D. J. & S. 417, where in a similar case the Lords Justices directed a mortgagor's costs to be paid out of a lunatic's estate, but intimated their opinion that in future mortgagors ought not to be served with such a petition. His Lordship said that he had a strong opinion that the mortgagor's costs ought not to be paid by the