

RECENT ENGLISH DECISIONS.

with such provisions for their respective advancement and education as the person making such charge should think fit." B. W. having only three daughters, *aged nine, and seven years, and one year*, appointed £10,000, being the full amount he was entitled to charge, for the portions of his three daughters, *to be a vested interest in such children respectively, immediately*, but to be paid at such times and in such proportions as he should by deed or will appoint, and in default of appointment to be paid to them share and share alike, at the age of 21 years or marriage if after his death, or, if the same should happen during his life, then at his death, with maintenance at the rate of £4 per cent. from his death. Kay, J., after observing that "it seems to be settled by authority that in the case of a portion charged on land, if no time is limited for the vesting or payment, and the child for whom it is intended should die under 21 and unmarried, the portion would not be raisable, but would sink for the benefit of the estate;" and after quoting the words of Kindersley, V.C., in *re Marsden's Trusts*, 4 Drew. 594, in which he says, amongst other things, that a power of appointing portions is "only one form of a discretionary trust to be exercised for the benefit of certain objects, or some of them. The objects of the power are the children of the marriage; and the purpose of the settlement was to make a provision for their benefit, but at the same time to reserve to the mother such a power as would keep the children under her control, and to enable her to distribute the property among them in such manner as, in her opinion, their respective wants and interests and the exigencies of the case might require;"—held, the above exercise of the power of appointment by B. W. was invalid. He says, p. 505:—"The principle seems to be, that a power of this kind being in the nature of a discretionary trust, the appointor must be taken to know that it is contrary to the nature of the trust to make an appointment so as to vest immediately portions in children of

tender years, and such an appointment would therefore be so improper that the Court would control it by refusing to allow the portions to be raised if the children did not live to want them. If it were necessary to go further, I must say I think the facts are sufficient to raise what Kindersley, V.C., in the passage I have read, calls a 'judicial inference,' that the intention of the appointor, in making the portions vest immediately was to secure a possible benefit to himself. He had three daughters and no son. A year after the birth of the last daughter he makes this charge, to vest immediately upon an estate which, if no son should be born to him, would go to other persons. I cannot see any reason why these portions should be directed to vest immediately except to benefit himself. The portions would not be raisable till his death. He gave maintenance only from that time, and directed that they should be payable at twenty-one or marriage. He did not provide for any advancement meanwhile."

WILL—SOLICITOR TO TRUST ESTATE NAMED BY TESTATOR.

In the last case in this number, *Foster v. Elsley*, p. 518, the point decided appears clearly from the following extract from the judgment of Chitty, J.:—"The testator in this case has inserted a clause in his will that 'my solicitor, W. E. Foster, shall be the solicitor to my estate, and to my said trustees in the managing and carrying out the provisions of this my will.' . . . I am told that no case is to be found in the books like the one before me, where a testator has appointed a particular person as solicitor to his estate, but in analogy to the cases to which I have referred, I decide that the direction in this will imposes no trust or duty on the trustees to continue the plaintiff as their solicitor, and that being my decision I refuse this motion with costs."

A.H.F.L.