

DIGEST OF ENGLISH LAW REPORTS.

mortgagor having become bankrupt, the mortgagee distrained for a year's rent under the attornment clause, though at that time the landlord's rent of £115, the interest on the money advanced, and the premiums, had all been paid. *Held*, on demurrer, that the attornment clause was not intended to enable the mortgagee to repay himself any of the capital advanced, but only to secure the payment of rent, interest, and premiums.—*Hampson v. Fellows*, Law Rep. 6 Eq. 575.

3. A mortgage deed contained a power to the mortgagee, on default, to sell and dispose of the premises by public sale or private contract for such price as could reasonably be gotten for the same. Default having been made, the mortgagee sold the premises and credited the mortgagor with the whole of the purchase-money; but in fact received only a part, and allowed the remainder to remain on mortgage given by the purchaser. *Held*, that the transaction being *bona fide*, the execution of the power was valid, and the original mortgagor had no equity of redemption.—*Thurlow v. Mackeson*, Law Rep. 4 Q. B. 97.

See DEMAND; DEVISE, 2; EXECUTOR AND ADMINISTRATOR, 2; FRIENDLY SOCIETY; HUSBAND AND WIFE, 2; LANDLORD AND TENANT, 1, 3; PRIORITY.

MORTMAIN.

A legacy payable out of both personalty and the proceeds of the sale of realty is, while unpaid, within the statute of mortmain; and it cannot be bequeathed by the legatee to a charity, nor can it be apportioned so as to give the charity that part of the legacy which would be paid out of personalty.—*Brook v. Badley*, Law Rep. 3 Ch. 672.

See WILL, 5.

NAVIGABLE WATER.

A claim for anchorage dues on a navigable arm of the sea cannot be supported in respect of the mere ownership of the soil; but such ownership, together with the maintenance of buoys from time out of mind, and the benefit to the public therefrom, are a sufficient consideration to support the claim, if the dues have been paid time out of mind. (Exch. Ch.)—*Free Fishers of Whitstable v. Foreman*, Law Rep. 3 C. P. 578.

See PRESCRIPTION.

NECESSARIES.

The plaintiff sold to the defendant, a minor, a pair of jewelled solitaires, which might be used as sleeve-buttons, worth £25, and an antique silver goblet, worth £15, which last the plaintiff knew the defendant intended for

a present. The defendant was the younger son of a deceased baronet, with no establishment of his own, and an allowance of £500 a year. In an action for the price of these articles, the question whether they were necessaries was left to the jury, who found that they were. *Held* (Exch. Ch.), that the question whether they were necessaries was one of fact, but like other questions of fact should not be left to the jury unless there was evidence on which they could reasonably find that they were; that there was no such evidence in this case, and that a nonsuit ought to have been ordered.

Whether evidence that the defendant was sufficiently provided with such articles, though the plaintiff did not know it, was admissible, *quære*.—*Ryder v. Wombwell*, Law Rep. 4 Ex. 32.

NEGLIGENCE.

1. The defendant, under a contract with the Metropolitan Board of Works, opened a public highway for the purpose of constructing a sewer; some months afterwards, the plaintiff's horse was injured by stumbling in a hole in the road. The defendant had properly filled up the road, and the hole was owing to the natural subsidence which sometimes takes place, sooner or later, after such an excavation. *Held*, that the defendant was not liable for the damage, for that there was no obligation on him to do more than properly reinstate the road. (Exch. Ch.)—*Hyams v. Webster*, Law Rep. 4 Q. B. 138.

2. The plaintiff, while travelling by the defendant's railway, was injured by the fall of a girder, which workmen, not under the defendant's control, were employed in placing across the walls of the railway. It was proved that the work was very dangerous, though none of the witnesses had ever known of a girder falling; that it was the practice when such work was going on over a railway, for the company to place a man to signal to the workmen the approach of a train; and that this precaution was not taken; but there was no evidence that the company's servants knew that the girder was being moved at the time the train was passing, or knew the means used for moving it. On a case in which the court were at liberty to draw inferences of fact: *Held* (in the Exchequer Chamber, reversing the judgment of the Court of Common Pleas), that though the evidence of negligence was such that it could not have been withdrawn from a jury, yet, that as a fact, the defendants were not guilty of negligence.—*Daniel v. Metropolitan Railway Co.*, Law Rep. 3 C. P. 591.