

REVIEW OF CURRENT ENGLISH CASES.

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WILL—DESTRUCTION—INTENTION—WILL FOUND TORN IN PIECES
—EXECUTORS ACCORDING TO TENOR—UNIVERSAL LEGATEES IN
TRUST—FORM OF GRANT.

In re MacKenzie (1909) P. 305. This was an application for probate of a will. The testatrix had executed the will in due form, whereby she left all she possessed to two persons, Pennycock and Lane, in trust to pay the income to the testatrix's husband for life, and after his death divide the estate between the four children. She had frequently referred to the will in her lifetime as an existing will, and had stated where it would be found on her death, and had never expressed any intention of destroying it. On her death the will was found sealed up in a linen bag, but it was all torn to pieces, which, when put together, formed the complete will. Deane, J., held that there had been no revocation of the will, and that notwithstanding it had been torn to pieces it was valid, but he held the two legatees in trust, not being directed to pay debts, could not be deemed executors according to the tendor, but that as universal legatees they had a paramount right to the husband, and administration with the will annexed was granted to the trustees.

EASEMENT—RIGHT OF WAY—PRESUMPTION OF LOST GRANT.

Hulbert v. Dale (1909) 2 Ch. 570. This was an action to restrain the defendant from using a certain road over the plaintiff's premises and over which the defendant claimed a right of way. By an inclosure award made in 1904 certain common lands were allotted to three adjoining owners, including the predecessors in title of the plaintiffs, and the defendant's lessor, and a private carriage road was awarded to the same persons leading from a specified point to the defendant's farm. This awarded road was never in fact used, and part of the plaintiff's buildings had stood for many years on part of the site of it. It was shewn by the evidence that as far as living memory went, up to the time of the dispute between the plaintiff and defendant, the road in question had been used by the defendant and his predecessors in title or occupation, and that it ran parallel with the road awarded. There had been unity of possession however of the plaintiff's and defendant's farms from 1889 to 1905, so that no