

CURIOSITIES OF ENGLISH LAW.

tator rather than his daughter, but in general the former has much the best of it. Not only is he permitted, and even encouraged, to hinder a woman from marrying any specified individual whom he may happen to dislike, but the law actually considers it reasonable that he should be empowered to impose a husband of his own choice as the price of enjoying his bounty. When not to marry A. B. is considered a punishable offence, we may conceive with what severity the crime of insisting upon marriage with C. D. is regarded by the judges. Lord Chancellor King (*Jarvis v. Duke*, 1 Vern. 19), waxed very eloquent on the "presumptuous disobedience" of such conduct, and observed that the delinquent highly merited her punishment "she being only prohibited to marry with one man by name and nothing in the whole fair Garden of Eden would serve her turn, but this forbidden fruit." The judges have experienced great difficulty in dealing with those cases where a testator has made his bounty dependent on marriage with consent, without limiting any time after which the legatee may marry without consent. Here the most refined distinctions have been taken, and the authorities are in a chaotic state of confusion. It is not only that all the before-mentioned inquiries may have to be made, 1st as to the nature of the property in dispute, whether realty, personalty, proceeds of sale of realty, or a mixed fund, 2ndly as to the nature of the condition whether precedent or subsequent, 3rdly as to whether there is a gift over, or 4thly an alternative gift—on every one of which points very difficult questions may arise—it is not only that a definite answer has, if possible, to be obtained to some, or perhaps, all of these perplexing inquiries, but that when the required results have with infinite labour been worked out, it often happens that the law applicable to them is involved in so much doubt, and the authorities are so confused and contradictory as to justify the Court in pronouncing a decree for either party it pleases.

The cases on gifts of land, and legacies charged on land, are particularly unsatisfactory and hard to reconcile. We have seen that in the construction of such gifts the doctrine of *in terrorem* does not apply. This seems to be the only distinction established beyond all dispute.

We seek in vain to discover from the authorities how far, or in what respects, the Law as to conditions in restraint of marriage annexed to gifts of realty differs from the Law relating to legacies out of personalty where there is a gift over, so as to eliminate the *in terrorem* factor of the problem, or even whether there is any difference at all. It has often been said that conditions precedent annexed to devises must be scrupulously complied with in order to raise the estate, either leaving it to be inferred, or sometimes expressly stating* that conditional bequests of personalty stand on a different footing; we are, however, unable to gather from the cases, taken collectively, in what the difference, if there be any, consists, and we doubt very much whether a condition precedent in restraint of marriage could be framed so as to be valid if annexed to realty, and void, notwithstanding a gift over, if annexed to personalty. In whatever way the Law may be finally settled, as regards conditions precedent, up to a very recent time we considered there could be no reasonable doubt as to one feature, at least of the Law applicable to condition subsequent. We used to be clearly of opinion that if any proposition of Law or Equity could be considered to be established beyond all controversy, it was the proposition that conditions subsequent in general restraint of marriage are altogether void, whether annexed to devises of realty or to bequests of personalty. What then was our astonishment when we found that six very learned counsel had recently succeeded in convincing (*Bellairs v. Bellairs*, L. R. 18 Eq., 510), no less eminent a Judge than the the present Master of the Rolls that a condition in general restraint of marriage, whether precedent or subsequent, annexed to a devise of realty, is perfectly good. It was unnecessary to decide the question as the ingenious six (who certainly deserved a better fate) were held to be out of Court on another point, but it is somewhat strange, at this time of day, to find six counsel capable of asserting, and an unusually able Judge capable of taking for granted, as he did in the most explicit and positive manner, the non-existence of what is, we venture to think, the most elementary and funda-

*As in the case of *Reynish v. Martin*, 3 Atk., 320, but see *Webb v. Grace*, 2 Ph., 701.