

## DIGEST OF ENGLISH LAW REPORTS.

the seller, and thereupon obtained back the deposit. A. subsequently became insolvent, and failed to repay C. his advances. C. sued B. for his breach of contract in giving up the notes to A. *Held*, that C. was entitled to substantial and not merely nominal damages. (Exch. Ch.)—*Matthews v. Discount Corporation*, L. R. 4 C. P. 228.

SEE PROXIMATE CAUSE; VENDOR AND PURCHASER OF REAL ESTATE.

## DEATH.

1. On a trial for bigamy, it was proved that the prisoner married A. in 1836, left him in 1843, and married again in 1847. Nothing had been heard of A. since the prisoner left him, but there was no evidence leading to the inference that A. had died. *Held*, that there was no presumption of law that A. was alive at the date of the second marriage.—*The Queen v. Lumley*, L. R. 1 C. C. 196.

2. A person entitled to dividends payable in April and October, for which he was in the habit of applying punctually, and on which he mainly depended for support, was last seen in August, 1860, without money and in bad health, and did not draw his October dividend. Seven years having elapsed: *Held*, that on the above facts it was to be presumed that he died before November 14, 1860.—*In re Beasney's Trusts*, L. R. 7 Eq. 498.

DECLARATION—See EVIDENCE, 1, 2.

DEGREE—See MORTGAGE, 2.

## DEED.

1. On the marriage of A., tenant for life of X. estate, with remainder to his first and other sons in tail male, a fund was settled (in case there should be children other than an eldest, second, or only son, for the time being entitled to X. estate, for an estate in tail male in possession, or remainder immediately expectant on A.'s death) on such children, after the death of A. and his wife, as A. should appoint, and, in default of A.'s appointment, equally. C., the eldest son of the marriage, joined with A. in barring the entail, and resettling X. estate to A. for life, then to C. for life, with remainder to C.'s sons successively in tail, remainder to C.'s heirs. A. died, having appointed half only of the fund. *Held*, that A.'s death was the period for ascertaining whether C. was excluded from a share in the fund, but (reversing decision of Wood, V.C.) that C., having had the benefit intended, notwithstanding the resettlement of X. estate, was excluded.—*Collingwood v. Stanhope*, L. R. 4 H. L. 43; s. c. L. R. 4 Eq. 286; 2 Am. Law Rev. 467.

2. A fund was settled after A.'s death on A.'s child J. and A.'s future children, and in case either of them should happen to be dead leaving issue, to such issue, equally to be divided amongst them or their issue respectively, to each being a son at twenty-one, being a daughter at twenty-one or marriage. In case J. or other child should die without issue before his share should become "due and payable," such share to survivors and issue of deceased child equally, when and as their original shares should become "due and payable." If at A.'s death neither J. or other child, nor issue of J. or other child, were living, or if all should die before their shares were "payable, then" over. The trustees had a power of advancement. J. died without issue, living A. *Held*, that J.'s share was divested, and went to the survivors.—*In re Wilmott's Trusts*, L. R. 7 Eq. 532.

See LANDLORD AND TENANT, 1; MORTGAGE, 2; SEPARATION DEED; TRUST, 1.

DEMAND—See AWARD, 2.

## DESERTION.

1. A husband left his wife, and the two immediately afterwards executed a separation deed. The husband soon ceased paying the allowance which he had covenanted to pay. *Held*, that the separation, being under the deed, was and continued voluntary, and was not desertion; and the husband's breach of his covenant did not make it so.—*Crabb v. Crabb*, L. R. 1 P. & D. 601.

2. A husband and wife were cohabiting in Jamaica, where the husband held an appointment, when the wife was obliged to come to England for her health. Afterwards, in 1851, the husband asked her to return, and provided funds for her passage, but she wrote that her health did not permit it. In 1856, he made her an allowance, which he stopped in 1860. She had made no offer to return since refusing his request. *Held*, that he had not deserted her.—*Keech v. Keech*, L. R. 1 P. & D. 641.

## DEVISE.

1. W. devised to his brothers, A., B., and C., thus: to A. "for life, and in default of his having issue living at the time of his death, to B. for life, and in default of his having issue living at the time of his death, to C. and his heirs; but in case A. should die leaving issue," to such issue in tail male. "And in case B. should come to the possession of the said estate hereinbefore limited to him, and should die leaving issue, said issue to take in like manner" as before limited to the issue of A. B. died in the lifetime of A., leaving a son who