favour, and have deducted their charges for the sale of the brewery from the proceeds of the sale of the furniture; but the Court of Appeal (reversing Bacon, V.C.,) held that the doctrine of marshalling had no application to such a case from the fact that the defendants had not a lien on both funds for their charges for the sale of the brewery, but only on the fund realized by that sale, and as to the other fund they had at most a right of retainer or set-off; and, further, that the doctrine of marshalling applies only when the funds in question are under the control of the Court. But Lindley, L.J., said that he did not think the defendants could have deprived the plaintiff of the benefit of his charge if there had been two funds to which they might have resorted under equal circumstances.

WILL—OPTION TO PURCHASE.

*In re Cousins, Alexander* v. *Cross*, 30 Chy. D. 203, the question was whether a right of purchase given by a will could be exercised by the executors of the person to whom the option was given. Bacon, V.C., held that it could; but the Court of Appeal reversed this decision, and held that it was a personal right which did not pass to the executors. The occasion of the contention is thus summarized by the Master of the Rolls. He says:—

Now, how is it the dispute has arisen? It has arisen by an accident. Cardiff is a wonderful place, as everybody who has been there knows; and Cardiff, for some reason or other, either by reason of the extension of the docks and other works, or by the careful superintendence and personal interest of its great proprietor, Lord Bute, has jumped up into a town double or treble the size that it was; not according to its natural growth, but according to a sudden artificial increase; and therefore this hotel, which was probably worth £10,000, has jumped up to a largely increased value, and immediately there is a law suit, and with the admirable ingenuity of lawyers of every description they try to make out of a man's will what he did not say, and what he never thought of.

How far this can be said to be complimentary to the profession we are not prepared to say.

WILL—MORTGAGE OF TURNPIKE TOLLS AND TOLL-HOUSES, NOT REAL SECURITY.

In the case of *Cavendish* v. *Cavendish*, 30 Chy. D. 227, the Court of Appeal reversed the decision of North, J., 24 Chy. D. 685, upon the construction of a will whereby the testator had made a specific bequest of all moneys, stocks, funds, shares and other securities, "except mortgages on real and leasehold security," the point in controversy being whether or not mortgages of turnpike road tolls and toll-houses were within the exception. North, J., held that they were; but the Court of Appeal decided that they were not, the latter Court being guided to this decision by a reference to other parts of the will in which the testator disposed of mortgages on freehold and copyhold hereditaments, and also by the fact that turnpike securities are not ordinarily called "mortgages."

Brett, M.R., thus laid down the canon of construction to be adopted:—

Unless I am dealing with questions as to real property, and unless the words are conveyancers' language which has been received and adopted in a certain sense for years, I am for construing every will by itself according to the ordinary meaning of ordinary people using the English language. . . I think that the person who drew this will did not go into the refinement of considering whether, in point of law, money lent on turnpike tolls was money lent on real property or not. He was not dealing with matters of that kind. Any person would call the piece of parchment upon which the mortgage was drawn up a security for money; he would not call it a mortgage on real or leasehold property

WILL—CONSTRUCTION—LAPSE BY DEATH OF LEGATEE

The following case of *In re Roberts, Tarleton* v. *Bruton*, 30 Chy. D. 234, is another decision of the Court of Appeal upon the construction of a will. The testator bequeathed the residue of his estate to trustees upon trust for a nephew and three nieces equally, and in case any or either of them should die under twenty-one he directed that the share or shares of the parties so dying, whether original or accruing, should go to the other or others of them; but he provided that the trustees should retain the shares of the nieces upon trust for the niece for life for her separate use, and after her decease as to the capital upon trust as she should appoint, and in default of appointment for her issue who should attain twenty-one, or marry, and in default of such issue for her next of kin. One of the nieces married and predeceased the testator, leaving a child who