filed by C. and D., *held*, that a receiver ought not to be appointed, it being merely a case where several persons set up adverse legal titles.—*Carrow* v. *Ferrior*, Law Rep. 3 Ch. 719.

2. M. filed a bill as next friend of P., whom he alleged to be of unsound mind. P., on a proceeding in lunacy, was found sane. The bill was taken off the files on P.'s application, and M. ordered to pay P.'s costs, as between solicitor and client, and the defendant's costs as between party and party.—*Palmer* v. *Walesby*, Law Rep. 3 Ch. 732.

Marriage—*See* Divorce; Nullity of Marriage.

Married Woman—*See* Husband and Wife.

Marshalling of Assets.

A., in Ceylon, was in the habit of consigning cargoes to his factors in England for sale on his account, and of drawing bills on the factors against the consignments. Consignments of coffee having been thus made, and the factors having accepted bills against them, the factors pledged the coffee, together with certain securities of their own, with one T., to secure a debt due from them to him. The factors became bankrupt, and T. sold the coffee (which produced more than enough to cover the bills drawn against it), and enough of the other securities to satisfy his debt. *Held*, that A. was entitled as against the factors' estate to have the remaining securities in T.'s hands marshalled, and to have a lien thereon for the balance due him on account of the coffee.—*Ex parte Alston*, Law Rep. 4 Ch. 168.

Master—*See* Bottomry Bond; Collision, 3; Freight, 1, 2.

Master and Servant.

To an action for breach of an indenture of apprenticeship, the defendant, the apprentice's father, pleaded that the apprentice "was and is prevented by act of God, to wit, by permanent illness, happening and arising after the making of the indenture, from remaining with or serving the plaintiff during all said term." *Held*, on demurrer, a good plea in excuse of performance, without any averment that the plaintiff had notice of the illness before the commencement of the action.—*Boast* v. *Firth*, Law Rep. 4 C. P. 1.

See Contract; Seduction.

Mesne Profits.

1. In an action of trespass for mesne profits the plaintiff proved that the defendant had had a lease of the premises (which was not produced), and that he had paid a certain yearly rent; but when or for how long did not appear. He also gave in evidence a judgment by default in a previous action of ejectment for the same premises. By the writ in ejectment, which was dated February 5th, 1868, the plaintiff had claimed title from March 28th, 1867. *Held*, that on all this evidence it sufficiently appeared that the defendant was in possession of the premises at the date of the writ of ejectment, and that the plaintiff was entitled to mesne profits from that time.

Per Kelly, C.B. The judgment by default taken alone is no evidence of the defendant's possession at any time. Per Channell and Cleasby, BB., such judgment is *prima facie* evidence that the defendant was in possession at the date of the writ, but not for the period during which the plaintiff claims title in his writ.—*Pearse* v. *Coaker*, Law Rep. 4 Ex. 92.

2. In an action for mesne profits the declaration alleged that the plaintiff "had incurred great expense in recovering possession of his land." *Held*, that under these words he was entitled to recover the costs of a previous action of ejectment.—*Ib.*

Misrepresentation—*See* Husband and Wife, 2; Injunction, 5; Vendor and Purchaser of Real Estate, 3.

Mistake—*See* Award, 1; Revocation of Will.

Money had and received.

Where a person transfers to a creditor on account of a debt, whether due or not, a fund actually existing or accruing in the hands of a third person, and notifies the transfer to the holder of the fund, and the holder promises to pay the transferee, an action for money had and received lies at the suit of the transferee against the holder.—*Griffin* v. *Weatherby*, Law Rep. 3 Q. B. 753.

Mortgage.

1. A debenture purporting to be an assignment of the undertaking and of all the real and personal estate of a company, to secure the repayment of a sum of money at a future date, creates a valid charge on all personal estate existing at the date of the debenture, but not on subsequently acquired personal estate.—*In re New Clydach Sheet and Bar Iron Co*, Law Rep. 6 Eq. 514.

2. A. mortgaged the lease of the house in which he lived, together with two policies of insurance, to the defendant, to secure the repayment of £250 and interest, and also the premiums. The mortgage deed contained a clause by which the mortgagor attorned tenant from year to year to the mortgagee in respect to the house at the yearly rent of £175. The