

RECENT ENGLISH DECISIONS.

goods, and had no interest therein. S., a resident in America, who claimed to be the owner of the goods, served notice of motion that he might be at liberty to reship the goods to a foreign port, and that if necessary he might be added as a defendant. The plaintiffs applied for security for costs from S., which was granted by Bacon, V.C., and his order was affirmed by the Court of Appeal.

MARRIAGE SETTLEMENT—AFTER-ACQUIRED PROPERTY.

In re Garnett, Robinson v. Gandy, 31 Chy. D. 648, is a case in which Kay, J., was called upon to determine whether certain property was subject to a covenant for settlement of after-acquired property contained in a marriage settlement. The settlement made in 1839 recited that the wife, amongst other property, was entitled to £10,000, part of her share of the residue of a testator's estate in the hands of the executors of the estate and secured by mortgage. This £10,000 was settled, and the settlement contained a covenant to settle after-acquired property. The day before the settlement the wife had given the executors a general release of all her claims to the testator's estate. Subsequently, in 1885, during the coverture, this release was set aside on the ground that her share was greatly in excess of that stated in the release, and the question was whether this excess, to which she became entitled on setting aside the release, was subject to the covenant to settle after-acquired property, and Kay, J., held that it was; and that not only the capital but also the income must be treated as a lump sum falling in when the release was set aside.

EXPROPRIATION OF LAND—RIGHT OF EXPROPRIATOR TO WAY OF NECESSITY.

In Serff v. Acton Local Board, 31 Chy. D. 679, the defendants had expropriated under their statutory powers half an acre of the lands of A, and five acres of the lands of B for the purpose of sewage works. The only way to the land taken was a warple way over other part of A's land, which for thirty years had been used by the occupiers of both A's and B's lands for the purposes of cultivation, but latterly by A for his own use only. It was held by Pearson, J., that the defendants had a right of way over the warple way for all necessary purposes in connection with the sewage works.

WILL—GIFT TO CHILDREN—PER STIRPES OR PER CAPITA.

The only case which remains to be considered is *In re Campbell's Trusts*, 31 Chy. D. 685, which is a decision of Pearson, J., upon the construction of a will, whereby the testator gave some houses to trustees, upon trust to receive the rents and to pay the same in equal moieties to his son and daughter during their lives; and after the death of either of them without issue living to pay the whole thereof to the survivor during the life of such survivor; but if there should be issue living of the first of them so dying, then upon trust to pay one-half to the survivor and to divide the other half between all and every the child or children of the one so dying; and after the decease of the survivor of the son and daughter on trust to sell the property and divide the proceeds equally amongst all and every the child or children of each of them, the testator's son and daughter, who should attain twenty-one, in equal shares and proportions. The question was whether the grandchildren took *per stirpes* or *per capita*. Although at first inclined to the opinion that the division must be *per capita* the learned judge decided that the proper construction of the will called for a division *per stirpes*. He distinguished the case from *Nockolds v. Locke*, 3 K. & J. 6, on the ground that the property in that case was personalty; and he considered that the division directed, in case of one of the testator's children dying before the other, precluded the idea that the testator intended to make a different division when the survivor should die.