the subsequent covenant of warranty. The words "and this conveyance in no way to take effect until after the decease of the said John Scott, the grantor," follow the exception, and acadded to it, and it is supposed they give charare teer to the instrument. But, while they limit th time when the deed is to take effect and raise a new question—whether the deed is a common law feoffment, or a covenant to stand seized to use, they in no wise impress upon the instrument the character of a will, or make it revocable by the act of the grantor alone. They do not release or discharge the grantee from his obligation to perform an immediate service, as the present consideration of the indenture; nor do they release the grantor from his covenant for title on the grantee's performance. But these are the very elements of contract, and not of voluntary devise. They take from the paper its title to be an absolute will, and draw it directly within the principle stated by the late C. J. Gibson.

The true point of the case is that the paper is a contract for acts to be done in the lifetime of the grantor, and is wholly inconsistent with the idea of mere testacy. The language of the late Chief Justice illustrates the point, and is therefore cited, and not because it contains a rule applicable to every case that can arise.

What, then was the true design of the instrument?

Clearly, it was on one side, to enable the father to have the labor and services of his son on his farm at home while he lived, retaining the right to its use and possession during his own lifetime, and to secure the maintenance of his wife after his death, if she survived him; and on the other hand, to secure the title to the son after his death, as a compensation for his labor and service. Did the son intend to perform his part of the indenture, and leave it optional with his father to retract and revoke his? Did the father intend to take the service of his son, and yet retain the power to disappoint him? No such design appears in the whole instrument; yet this is the burden of proof of an actual intent which the form of the instrument imports.

Certainly there was a bargain between these parties, as the intent of the writing clearly shows. It was for a valuable consideration, and though the writing may not operate as a common law feoffment because of the reserved life estate, yet it will operate as a covenant to stand to the use of the son, on his performing the services stipulated as the consideration. If he failed to perform it, equity may relieve the covenantor because of the failure of the consideration; but it cannot alter that which clearly was a bargain in terms and intent, and thus change the writing from a deed into a mere will.

I would therefore affirm the judgment of the court below.—*Pittsburgh Legal Journal.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR THE MONTHS OF NOVEMBER AND DECEMBER, 1866, AND JANUARY, 1867.

(*Continued from page* 165.)

New Trial.—*See* Libel, 2.

Nuisance.—*See* Master and Servant, 5.

Parties.—*See* Equity Pleading and Practice, 1. 2; Mortgage, 1; Solicitor, 1.

Partnership. — *See* Mortgage, 1; Practice, 2; Solicitor, 1.

Patent.

1. A. obtained a patent for improvements in the construction of ships. By his specification, he claimed as his invention (amongst others) 1, the construction of ships "with an iron frame combined with an external covering of timber;" "b, the consruction of iron frames adapted to an external covering of timber, as described." *Held*, that the term "iron frame" in the first claim was not confined to such an iron frame as that specified in the sixth claim; and that inasmuch as the use of iron and timber in the construction of ships was already known and used, and as the claim was only for the application of the same old invention, viz., planking with timber, which was formerly done on a wooden frame, to the same purpose on an iron frame, the patent could not be sustained. —*Jordan* v. *Moore*, Law Rep. 1 C. P. 624.

2. Time for applying for letters patent was extended where the delay was small and accidental.—*In re Hersee*, Law Rep. 1 Ch. 518.

Penalty.—*See* Mortgage, 2.

Perjury.

False swearing before a local marine board, acting under 17 & 18 Vic. c. 104, is perjury.—*The Queen* v. *Tomlinson*, Law Rep. 1 C. C. 49.

Pleading.—*See* Equity Pleading and Practice; Practice, 1, 3; Solicitor, 2.

Pledge.—*See* Bill of Lading.

Power.

1. Testatrix had, by her marriage settlement, power to appoint certain funds but it did not appear that she had any other property. By will, made before the Wills Act, not referring in terms to the power, she gave all her property and estate, of what nature, kind, quality soever the same might be, to her husband absolutely. *Held*, an execution of the power. — *Attorney General* v. *Wilkinson*, Law Rep. 2 Eq. 816.