

## RECENT ENGLISH DECISIONS.

anybody at all." Hence, he draws a distinction between a case like the present, or a case where a testator says—"I give all my personal estate, except my gold watch, which I give to A., and my leasehold house, which I give to B," and a case where a testator gives everything to A. except his gold watch and his leasehold estate, and does not give them to anybody else. In the former case there is a true residuary gift, but not in the latter. Having determined that there was in the present case a true residuary gift, the M. R. deals with the second question of whether there was any intention to exclude the void bequest from falling into the residue, according to the usual statutory rule. As to this he says, with his usual force—"It appears to me very difficult to suppose that a testator should intend that a legacy which fails from being void should not go into the residue. Unless you find express words shewing that the testator doubted whether a bequest in his will was void or not, it is impossible to suppose that he contemplated what would happen if the bequest was invalid."

STAY OF PROCEEDINGS—SUIT BETWEEN THE SAME PARTIES IN HOME AND FOREIGN COURTS.

The next case, the *Peruvian Guano Company v. Bockwoldt*, p. 225, was an application on behalf of the defendant that the plaintiffs might be ordered within seven days to elect whether they would proceed with the action, or with proceedings which they had instituted in a Court in France in relation to the same subject matter. It does not seem necessary to notice it here, as it simply applies the principles laid down in *M'Henry v. Lewis*, L. R. 22 Ch. D. 397, a case which was noticed at length, *supra*, p. 145, and which Lindley, L. J., characterises here as "a most valuable decision."

VOLUNTARY SETTLEMENT—GROUNDS FOR SETTING ASIDE.

The next case to be noticed is *Dutton v. Thompson*, p. 278, in which the plaintiff sought to have a certain voluntary settlement of his property set aside which he had executed at the suggestion of the defendant, his

uncle and trustee of the settlement, and as it appeared that the plaintiff was very weak minded, and had not understood what he was doing, the relief asked for was granted. Jessel, M. R., made the following remarks on the general subject involved:—"I think the deed cannot stand, on the ground alleged in the statement of claim, namely, that the plaintiff did not understand it. I emphatically disagree with the ground on which some judges have set aside voluntary settlements, viz., that there were provisions in them which were not proper to be inserted in such settlements. It is not the province of a Court of Justice to decide on what terms or conditions a man of competent understanding may choose to dispose of his property. If he thoroughly understands what he is about, it is not the duty of a Court of Justice to set aside a settlement which he chooses to execute on the ground that it contains clauses which are not proper."

VENDOR AND PURCHASER—WAIVER OF OBJECTIONS TO TITLE.

The last case in the July number of the Chancery Division to be noticed here is *In re Gloag and Miller's contract*, p. 320, where in Fry, J., lays down the law as follows:—"When the contract is silent as to the title which is to be shown by the vendor, and the purchaser's right to a good title is merely implied by law, that legal implication may be rebutted by showing that the purchaser had notice before the contract that the vendor could not give a good title. If the vendor before the execution of the contract said to the purchaser, I cannot make out a perfect title to the property, that notice would repel the purchaser's right to require a good title to be shown. But, if the contract expressly provides that a good title shall be shown, then, inasmuch as a notice by the vendor that he could not show a good title would be inconsistent with the contract, such a notice would be unavailing, and whatever notice of a defect in the title might have been given to the purchaser, he could still be entitled to insist on a good title." He also holds in this case that if the contract con-