testatrix thereby bequeathed her personal estate upon trust for sale, and out of the proceeds to pay her debts and testamentary expenses, and then to pay a legacy to her niece; and the residue of her personal estate, save and except such parts thereof as could not by law be appropriated by will to charitable purposes, she bequeathed to a charity. Part of her estate consisted of impure personalty. It was contended on behalf of the charity that the will operated as a direction to marshal the assets in favour of the charity, but Kekewich, J., was of opinion that marshalling in favour of a charity is only to be resorted to in order to give effect to the directions of a will; and that in the present case the express exception from the bequest to the charity, of property which could not by law be appropriated by will thereto, indicated that due effect could be given to the will without marshalling. He therefore held that there was an intestacy as to the impure personalty; but see now 55 Vict., c. 20, s. 4 (O.).

HUSBAND AND WIFE—MARRIAGE CONTRACT—CREDITORS.

In *Birkett* v. *Purdom*, (1895) A.C. 371; 11 R. July 1, a somewhat curious marriage contract was in question, whereby in contemplation of marriage the husband bound himself to pay to his wife an annuity of £1,000, "to be applied by her towards the expenses of my household and establishment, and that during all the days of my life." He secured the annuity upon land, and declared the annuity to be his wife's separate property free of the *jus mariti*. The husband having made a trust deed in favour of creditors, the wife, with the concurrence of her husband, brought the present action to obtain payment of the arrears of the annuity in priority to her husband's creditors, the husband's estate being insufficient to pay his creditors. The Scotch Court of Session dismissed the action, and this decision was affirmed by the House of Lords (Lords Herschell, L.C., and Watson, Ashbourne, Macnaghten, and Shand), their lordships being of opinion that, notwithstanding the provision declaring the annuity to be the wife's separate property, it was really a settlement of the husband's property for his own benefit, and could not prevail as against his creditors.

MUNICIPALITY—ROADS—NON-REPAIR OF HIGHWAY.

In *Municipal Council of Sydney* v. *Bourke*, (1895) A.C. 433; 11 R. July 57, an appeal from New South Wales, the Judicial