

DIGEST OF THE ENGLISH LAW REPORTS.

ant, a corn-merchant and warehouseman, and owner of several barges. It was the plaintiff's duty to attend to the mooring and unmooring of barges; and there were two ways of passing from the defendant's premises to the barges, viz., by going down certain stairs to the water at the end of a street, and thence by wherry to the barges; or by going from the defendant's warehouse through a doorway to the barges, the latter being the way the plaintiff usually adopted. The plaintiff, on leaving defendant's premises by said doorway, was injured by a sack of peas falling on him through the negligence of the defendant's men. *Held*, that the defendant was not liable. —*Lovell v. Howell*, 1 C. P. D. 161.

MORTGAGE.

1. Mortgagees, being of opinion that their security would be insufficient to pay their debt, proved their whole claim against the mortgagor, who was in bankruptcy, and received a dividend under a compromise made without prejudice to securities, and under which the bankrupt's estate was relieved from further liability to creditors. Subsequently the mortgaged property proved sufficient to pay the whole of said mortgagee's debt, and to leave a surplus. There were subsequent mortgagees of said mortgaged property, who claimed that the dividend received by the prior mortgagees should enure to their benefit. *Held*, that said dividend must be repaid to the bankrupt's estate for the benefit of the general creditors. —*Sawyer v. Goodwin*, 1 Ch. D. 351.

2. Gray mortgaged Blackacre to Oliver, and subsequently to other parties. Each mortgagee had notice of every other mortgage. Gray then mortgaged Whiteacre to Baker. Baker agreed with Gray to pay off Oliver's mortgage; and Gray agreed to concur with Oliver in a transfer of Oliver's mortgage to Baker, and to give a charge on his equity in Blackacre, subject to the said other mortgages upon it. Oliver's mortgage was accordingly transferred to Baker, who paid to Oliver the amount due on his mortgage. Baker then filed a bill praying a declaration that he was entitled to consolidate his two mortgages, and that the subsequent mortgagees of Blackacre were not entitled to be paid until both his mortgage-debts were paid. *Held*, that Baker was not entitled as against the subsequent mortgagees of Blackacre to consolidate his two mortgages. —*Baker v. Gray*, 1 Ch. D. 491.

3. A testator directed that his debts should be paid, and then devised a certain estate to J., one of his executors, subject to and chargeable with the payment of the testator's debts. J. mortgaged said estate to C., and used the mortgage money for his own purposes. C. had no notice of the purpose to which J. intended to apply the mortgage-money. *Held*, that the mortgagee held the estate free from any charge for the payment of the testator's debts. —*Corser v. Offitwright*, L. R. 7 H. L. 731; s. c. L. R. 8 Ch. 971; 8 Am. Law Rev. 547.

See CONTRACT, 1; COVENANT; DEVISE, 1, 5.

NAME.

Provision in a devise that the devisee must take the arms and name of G. *Held*, that the name of G. must be taken and used after the previous name of the devisee. Using it before the devisee's surname was not a compliance with the condition. —*D'Eyncourt v. Gregory*, 1 Ch. D. 441.

NEGLIGENCE.

The defendant, an agistor of cattle, placed the plaintiff's colt in a field with several heifers, and the colt was there killed by a bull. The bull belonged on land adjoining the defendant's field, but separated from it by a narrow ditch. The defendant knew that the bull had been several times found on his land, the ditch not being sufficient to keep him out; but there was no evidence that the bull was of a mischievous disposition. The jury found the defendant guilty of negligence. *Held*, that the defendant was liable, although ignorant of the mischievous disposition of the bull. —*Smith v. Cook*, 1 Q. B. D. 79.

See MASTER AND SERVANT; SHIP.

NOTICE TO REPAIR. — See LEASE, 1.

PARISHIONER.

"Parishioner" takes in, not only inhabitants of the parish, but persons who are occupiers of land, that pay the several rates and duties, though they are not resident and do not contribute to the ornaments of the church. —*Etherington v. Wilson*, 1 Ch. D. 160.

PARTNERSHIP.

By partnership articles, D. was to be a partner with A. and B. in profits, but not in the capital stock, and he was not required to find any capital. D.'s partnership was to continue for twelve years, at the expiration of which term his interest in the concern was to cease. If D. died during such term, his representatives were to receive a proportionate part of his share of the profits of the current half-year for the period up to his decease, to be ascertained according to the average of the last two preceding half-yearly stock-takings. D. died; after which the business was carried on by A. and B. until A.'s death, and then by B. alone. A creditor of the firm, in respect of a debt contracted while the firm consisted of A., B., and D., claimed to have the whole of B.'s estate applied in payment of all the creditors of A., B., and D., without regard to whether their debts were contracted before or after the death of D., or before or after the death of A. There were in existence specific assets which had belonged to the firm while it consisted of A., B., and D. *Held*, that, under the partnership articles, D.'s executors had a right to have the debts existing at D.'s death paid out of the then existing assets; that the assets then on hand, and now existing *in specie*, must therefore be applied in payment of the creditors of the original firm of A., B., and D., and that, therefore, such creditors could not take B.'s separate assets until his separate creditors had been