

their education and maintenance, instead of a small portion thereof allowed him by the trustees. His income was only £200 a year; he had five children by a second marriage, and had contracted debts in maintaining the three daughters of his first wife at school. *Held* that the court could control the discretion given the trustees; and it was ordered that the trustees pay the whole of the income to the father for the future, as well as what had already been withheld and accumulated.—*In re Hodges. Davey v. Ward*, 7 Ch. D. 754.

*Ultra Vires*.—See *Company*, 1; *Contract*, 2; *Railway*, 2.

*Vendor and Purchaser*.—See *Sale*.

*Waiver*.—The defendant executed a deed covenanting to pay the plaintiff £400 on demand with interest; and it was provided that the debt should run two years, if the interest should be "punctually" paid; and the defendant charged his leaseholds with the debt, and agreed to give a formal mortgage on them on demand. Six months' interest becoming due and not being paid, the plaintiff demanded the £400 and interest or a formal mortgage. The defendant paid the interest, and the plaintiff gave a receipt for it "without prejudice to the notice." He offered to accept an instalment of £100. *Held*, that neither receipt of the interest nor the unaccepted offer operated as a waiver of plaintiff's right to recover the whole at once.—*Keene v. Biscoe*, 8 Ch. D. 201.

*Warranty*.—See *Charter-party*.

*Way*.—The defendant owned a house with a gateway under it, and a yard in the rear, partly covered. The road under the gateway and the yard were paved with stones, and there was no other approach to defendant's stables in the rear, where he kept his horses; allowing his vans, when not in use, to stand in the yard. Defendant leased the yard to the plaintiff, with power to erect a building suitable for his business of gas-engineer. Plaintiff was not "to obstruct the entrance and gateway, except by the use of the entrance for the purposes of ingress and egress." Plaintiff erected his building, to which, as to the stables, there was no approach except by the paved way. Plaintiff applied for an injunction to restrain the defendant from obstructing the way with his vans, and alleging damage to his business from such obstruction. *Held*, that under the lease he had

a general right of way unobstructed.—*Cannon v. Villars*, 8 Ch. D. 415.

*Will*.—1. A testator directed his executors "to pay my . . . debts out of the proceeds of my property." Then followed, "Whereas I am possessed of landed and chattel property, as stated in the annexed schedule, I direct my executors to sell" four pieces of landed property named "for its full value." A fifth piece was then devised to W. for life, remainder to F., ultimate remainder to T., and T. was made residuary legatee. Several legacies were given. The will was written on three sides of a sheet of paper; the signature and attestation were at the bottom of the third page. The fourth page contained a schedule of testator's landed property, and was headed "Schedule referred to within." It contained the four pieces ordered to be sold; and at the bottom of the schedule the statement that the fifth "is not included in the above schedule, it being willed by me to W.: my executors have no control over it." The schedule was signed by the testator, and bore the same date as the will. The attesting witnesses to the will knew nothing about the schedule. *Held*, that the schedule formed no part of the will, and could not be referred to in construing the will; but that by the will proper all the real estate, except the specific devise to W., was to be turned into money for the general purposes of the will, and that what remained went to T., the residuary legatee, and not to the heir-at-law.—*Singleton v. Tomlinson*, 3 App. Cas. 404.

2. H. died April 16, 1852, leaving a will, by which he devised real estate to trustees for his wife; during her life or widowhood, and, upon her second marriage, for certain trusts named during her life, and then to G. M. absolutely. He then gave personal property in trust to pay the income to the wife until her second marriage; and upon that event "all the bequests" in her favor were to cease, and she was to receive £500 a year during her life, to be paid from the rents of the real, and any deficiency to be made up from the income of the personal estate; and the trustees were to accumulate the balance until her death, and then pay it over in certain legacies specified. As to the residue of the whole personal property and the income thereof, and the rents from the real property accumulated at the wife's death, he