

RECENT ENGLISH DECISIONS.

percolated through the embankment, as it probably would have done, and by reason of its so passing through these openings in such different manner it damaged the plaintiff's land. The question was, whether the defendants were liable to the plaintiff. The jury found that from the way in which the defendants let the water through, it did more damage to the plaintiff's land than if it had been allowed to percolate through without their having done anything; but they also found that if the defendants had only to consider the preservation of their own land, what they did was a reasonable thing to do, and it was not done by them negligently. Under these circumstances, the Court of Appeal now held the defendants liable. The principal judgment was that of the M.R., who formulates the question before the Court into the following proposition: "When the water, by an extraordinary misfortune, had come to rest against the defendant's property, had they a right, in order to save their own property, to do that, the necessary effect of which was to injure their neighbour's property?" It is impossible here to follow out the different distinctions drawn in this philosophical judgment, but the way in which he sums up the result may be given in his own words: "An extraordinary misfortune happened; it fell upon the defendants, and if they had allowed things to remain as they were, they would have been the sufferers; but in order to get rid of the misfortune which had happened to them, and which, *rebus sic stantibus*, would not have injured the plaintiff, they did something which brought an injury upon the plaintiff. Under these circumstances, it seems to me the defendants are liable." "Of course there is a difference," says Lindley, L. J., at p. 140, "between protecting yourself from an injury which is not yet suffered by you, and getting rid of the consequences of an injury which has occurred to you."

HUSBAND AND WIFE—SEPARATE ESTATE—WILL.

In *Dye v. Dye*, at p. 147, it was decided that, in order that the fee simple of an intended wife may be affected with a trust for her separate use by an agreement made between the intended husband and wife before marriage, the agreement must be in writing and signed by the wife as well as by the husband; and mere renunciation by an intended husband of his marital rights in his wife's real property is not sufficient to clothe her with a testamentary power, or to constitute a valid declaration of trust of the fee. But by reason of recent legislation in this Province, it does not appear necessary to dwell upon this case here.

MEASURE OF DAMAGES—LOSS OF MARKET.

In 9 P.D., pp. 101-121, there is only one case which calls for mention, viz., *The Notting Hill*, p. 105, wherein it was decided by the Court of Appeal, affirming Sir James Hannen, that loss of market was too remote a consequence to be considered as an element of damage. Here, a ship, having been damaged by a collision with another ship, the owners of the cargo on the former claimed damages from the owners of the latter ship, *inter alia*, in respect of the loss of market in consequence of a portion of the cargo having been delayed in its arrival at the port of destination. Sir James Hannen, indeed, expressed himself as reluctantly forced to come to the above decision by reason of the weight of authority, but the Court of Appeal upheld the decision, Brett, M. R., quoting the words of Mellish, L. J., in *The Parana*, L.R. 2 P.D. 118, that loss of market, in the sense that persons are entitled to the difference between the price when the goods arrived and the price when they ought to have arrived, is on an ordinary voyage so uncertain that it cannot be the natural and reasonable consequence in every case. And therefore it is not the natural and