mediate severance of the timber, it is a contract for the sale or reservation of an interest in land, and until actual severance the timber in such cases passes to the heir, and not to the personal representative. But when the agreement is made with a view to the immediate severance of the timber from the soil, it is regarded as personal property, and passes to the executor or administrator, and not to the heir. The earlier authorities, it is true, do not appear to make any distinction between such contracts. Thus, it is said: If tenant in fee simple grants away the trees, they are absolutely passed from the grantor and his heirs, and vested in the grantee, and go to the executors or administrators, being, in understanding of law, divided as chattels from the freehold, and the grantee hath power, incident and implied to the grant, to fell them when he will, without any other special license. *Stukely* v. *Butler*, Hob. 173 a. So where tenant in fee simple sells the land, and reserves the trees from sale, the trees are in property divided from the land, although in fact they remain annexed to to it, and will pass to the executors or administrators of the vendor. *Harlakenden's Case*, 4 Co., 63 b; *Lifford's Case*, 11 id. 50; 4 Bac. Abr. Tit. Exr's and Admr's, H. 82; 1 Wm's Exr's, 94. But the distinction to which we have adverted, between contracts made with a view to the immediate severance of the timber, and those which are not, is taken in the latter authorities. *Crosby* v. *Wadsworth*, 6 East, 610; *Smith* v. *Surnam*, 9 B. & C. 561; 17 E. C. L. 443; Add. Contr. 31, and recognized in our own decisions; *Huff v. McCauley*, 3 P. F. Smith, 206; *Pattison's Appeal*, 11; id. 294. In the case last cited, the present Chief Justice said: We regard a contract for the standing timber on a tract of land to be taken off at discretion as to time, as an interest in land, and within the statute of frauds and perjuries, the transmission of which must be by writing. But in the case in hand, it is manifest that the parties intended by their contract to divide the pine and hemlock timber from the freehold, and give it to the quality of a chattel. It was not to be taken off at discretion as to time. By the express terms of the deed, the vendee of the land had the right to require its removal on giving, and the vendor was bound to take it off on receiving, thirty days' notice. The timber must, therefore, be regarded as a chattel which passed to the administrator. In so ruling, we do not trench upon the doctrine laid down in *Pattison's Appeal*, or qualify it in any respect whatever. The case was unlike this in one of its material elements, and was well decided on its facts; and the guarded language of the chief justice shows that he had in view the distinction which the law makes in regard to contracts for the reservation or sale of growing timber. If the reservation had been of a perpetual right to enter on the land, and cut all the pine and hemlock timber growing thereon, or of a right to cut and take it off at discretion as to time, then it would be within the rule laid down in *Yeakle* v. *Jacob*, 9 Casey, 376, and *Pattison's Appeal* and be regarded as an interest in land, which would pass to the heir and not to the administrator, on the vendor's death. But this element, as we have seen, is wanting, and, therefore, the Orphans' Court rightly held, under the authorities, that the timber in question was personal property, for the value of which the administrator was accountable. It needs no argument to show that the vendor received the whole property in the timber, and not merely a right to its "use and advantage" during his life. This is too apparent on the face of the deed to admit of doubt or question.

We see nothing in the facts of this case to take it out of the rule laid down in *Sterrett's Appeal*, 2 Penn'a Rep. 419, and it follows that the administrator was properly charged with the costs of the audit.

Decree affirmed at the cost of the appellant. —*Philadelphia Legal Gazette.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS

FOR NOVEMBER AND DECEMBER, 1873, AND JANUARY, 1874.

From the American Law Review.

ACCUMULATION.—*See* APPOINTMENT, 2; DEVISE, 4.

ACT OF BANKRUPTCY.—*See* BANKRUPTCY, 1.

ACTION.

A married woman owning separate real estate raised money, partly for building on said estate, and partly to pay a debt of her husband's. Both husband and wife joined in the mortgage, and the husband covenanted to repay the loan, which was payable in instalments. The husband and wife gave the defendant authority to receive the first instalment, and the defendant received the same and paid said debt, and held the residue for a debt due him from the husband. The husband and wife brought an action, in the wife's right, for said residue. *Held*, that said wife could be joined in the action.—*Jones* v. *Cuthbertson*, L. R. 8 Q. B. 504.

See COMPANY, 1; FALSE REPRESENTATION.