

RECENT DECISIONS.

own survivor, it remains to inquire whether the real meaning of the word is not 'longest lives, or longest liver of the class of daughters.' " And he held such to be the true meaning of the words. "The petitioner," he said, "has not survived the class of daughters, but she is the longest liver of the class." He, therefore, held that the petitioner would be entitled to her own share of the £10,000 absolutely if she should die without leaving issue, and that by reason of her age it might be assumed that she will never have any children, and her share might be transferred to her then.

In re Chaston, Chaston v. Seago, p. 218, is also a will case. The testator in the will in question, after leaving certain legacies to his sons and daughters, provided, in certain events, for a gift over of the said legacies "or so much thereof as shall not have been paid to him, her, or them so dying;" which he afterwards described as "such part thereof as shall not have been received by them." It was contended that a gift over of so much of a share as shall not have been paid to or received by a legatee is void for uncertainty. Fry, J., however, after expressing disapproval of a recent decision of Malins, V. C., in *Bubb v. Padwick*, 13 Ch. D., 517, said: "I believe all the earlier cases proceed simply on this enquiry: Is the contingency expressed with definite certainty? If it be, we will give effect to it; if it be not, we will not give effect to it. . . . I think it needless to go through the earlier authorities, because, having considered them with some attention, it appears clear that that was the principle on which they all proceeded. . . . Independently of authority I should have thought it sufficiently distinct, but the cases to which I have referred shew, in my judgment, that the words in this will must have reference to the period appointed for distribution [not to the time of actual payment or receipt]. That is in no way uncertain, and therefore no difficulty exists."

FORECLOSURE ACTION—STATUTE OF LIMITATIONS.

Harlock v. Ashberry, p. 229, is a fresh authority for the view taken in former cases, that an action for simple foreclosure is not an action to recover the sum of money secured by the mortgage, but is an action to recover land, the recovery of the money, if it occurs at all, resulting, not from the object of the action, but from the conditions which the Court imposes on the right of the plaintiff: and therefore it is within sects. 2 and 24 of Imp. 3 and 4 Will. 4 c. 27 (sects. 4 and 29 of R. S. O. c. 108), and not within sect. 40 (sect. 23, R. S. O. c. 108). It decides, moreover, that the right of the mortgagee to recover the land, will be kept alive under Imp. 7 Will. 4 and 1 Vict. c. 28 (R. S. O. c. 108 sect. 22) by a payment made "by the mortgagor, or by any agent of the mortgagor, or by any person who, as between the mortgagor and the mortgagee, is liable to make any payment to the mortgagee in satisfaction of the mortgage debt;" (per Fry, J. p. 234); for example, as in this case, the tenant whose land is mortgaged is a person who, as between the mortgagor and the mortgagee, is liable to make a payment to the mortgagee in satisfaction of the mortgage debt; and therefore his payment to the mortgagee will keep alive the mortgagee's right to foreclosure.

RENEWAL OF LEASE--COVENANTS--CONDITION PRECEDENT.

Bastin v. Bidwell, p. 238, was a case of a lease in which the lessor covenanted that the lessee should be entitled, on giving six months' notice before the end of the term, to have a further lease for twenty-one years "upon paying the rent and performing and observing the covenants" in his lease, and Kay, J., after reviewing many of the decisions as between covenants independent, and covenants forming conditions precedent, held that in this case the performance of the covenants was a condition precedent to the lessee's privilege of having a renewed lease, and the acts covenanted for not having been completed either when the six months' notice