

## RECENT ENGLISH DECISIONS.

## WILL—REMOTENESS—CONDITION—ANNUITY—COSTS.

Of *Patching v. Barnett*, p. 74, we may observe that (i.) it illustrates the "perfectly well settled" rule of law, that where the age is part of the description of the devisee, if the gift is to the devisee who should attain that age, and the period of vesting is beyond the life in being and twenty-one years, the gift fails. In his judgment on this point, Jessel, M. R., observes: "We must not, because testators' intentions are every now and then frustrated by the application of rules of law, either attempt, on the one hand, to destroy those useful rules of law which exist against perpetuity or remoteness, or, on the other hand, break in upon recognized canons of construction merely for the purpose of giving effect to the testator's desires, where the law otherwise does not allow them to be carried into effect." (ii.) The testator bequeathed a certain chattel to "John, Duke of Bedford" upon certain conditions. The Duke of Bedford living at the date of the will and death of the testator was named "Francis." He died without fulfilling the condition. Malins, V.C., held that his executors in conjunction with present duke could perform the conditions imposed by the will. The Court of Appeal, however, held that on the death of Francis, the gift lapsed and fell into the general residue. (iii.) A codicil contained a gift to a lady of an "annuity or yearly sum," which the testator directed to be charged upon two certain farms, and if it was in arrear the annuitant might distrain; and if in arrear for a longer time, she might enter and receive the rents and profits. The Court of Appeal held this was a legal limitation of a rent charge, and the personal estate was not liable. Jessel, M.R., said: "There is no operation or exoneration of personal estate. The personal estate is not charged at all. As I said before, those cases which say that where there is a bequest payable out of the personal estate the mere addition of a charge on real estate does not exonerate the personalty, have no application to a case where, from the con-

struction of the instrument, the Court is led to the conclusion that the personal estate is not liable. (iv.) Lastly, a question arose as to costs, which gave rise to the following remarks from Jessel, M.R., which were concurred in by the other Judges of the Court of Appeal: "I think it important to say that in the the administration of real and personal estate, the modern rule is that the costs exclusively occasioned by the real estate are thrown upon the real estate; and the general costs of the suit are borne by the personal estate. But what I will call the increased costs arising from administering the real estate—are, as a rule, thrown upon the real estate; and the Courts have been in the habit for several years past of apportioning these costs between each estate at the hearing, instead of throwing upon the taxing master the very difficult task of ascertaining how much of each bill of costs made out by the solicitors has been occasioned exclusively by the real estate administration, and how much by the personal estate administration. That rule has been found to be very convenient and to save great cost, great delay and great difficulty in the taxing office." And after observing that Malins, V.C., appeared to have adopted this course in the Court below, he added:—"I think it would not be right on the part of the Appeal Court to interfere with the discretion of the Judge in the Court below as to the apportionment of the costs."

## PRACTICE—DISPENSING WITH LEGAL PERSONAL REPRESENTATIVE.

In *Curtius v. Caledonian Fire and Life Insurance Co.*, p. 80, the plaintiff, as assignee by way of mortgage of a policy of life insurance, sued the defendant company for the policy moneys, which were far less than the whole amount of his debt. The insured had died intestate and insolvent, and there was evidence showing that his widow and next kin disclaimed all interest in the policy moneys. Under these circumstances Jessel, M.R., had ordered payment and dispensed with the presence of a personal representative, under