

DIGEST OF ENGLISH LAW REPORTS.

prejudice to the creditor's original rights. *Held*, that the proviso was not a penalty against which equity would relieve. Judgment of CHELMSFORD, L.C., reversed.—*Thompson v. Hudson*, L. R. 4 H. L. 1; s. c. 2 Eq. 612; 2 Ch. 255; 1 Am. Law Rev. 518, 690.

2. A mortgage secured £600, future advances, interest on both, and all costs of any suits under the provisions of the deed or in anywise connected therewith; the total moneys secured not to exceed £1200. On a bill to redeem, a decree was made by STUART, V.C., directing an account of what was due the mortgagee for principal and interest under the deed, and of sale-moneys, rents, and profits received by him. The mortgagee appealed. *Held*, that the decree was right. (*Per SELWYN*, L.J.) Because costs properly incurred in actions relating to the property might be claimed under it as "just allowances." (*Per GIFFARD*, L.J.) Because they might be claimed as principal due under the deed.—*Blackford v. Davis*, L. R. 4 Ch. 304.

3. B. mortgaged a term to D. for £3000. D. submortgaged the term, less three days, and the debt, to E., with power to sue for the whole of the same, to secure £1200. B. died, and E. claimed £3000 from B.'s estate. B.'s administrators assigned the equity of redemption to D. D. by registered deed assigned all his estate to trustees for the benefit of creditors. E. foreclosed a second submortgagee, and D., whose trustees disclaimed by answer. E. then ceased paying rent, which he had been doing, and B.'s lessors entered. *Held*, that the disclaimer only extended to what was in issue in the suit, and did not enlarge E.'s estate, and that E. could prove against B.'s estate for £3000, but was not to receive more than £1200, interest and costs.—*In re Burrell*, L. R. 7 Eq. 399.

4. A. and B., mortgagees, transferred their mortgage to W., who gave no notice of the transfer to T., the mortgagor. T., intending to redeem, paid the amount secured by the mortgage to the solicitors of A. and B., who were also W.'s solicitors, without ascertaining that they were authorized to receive it. The solicitors misappropriated the money, and prepared a deed which A. and B. signed, being deceived as to its contents, which contained a recital acknowledging the receipt of the money, and which purported to convey the property to the mortgagor's nominee. No receipt was indorsed on the deed. *Held*, that W. was entitled to foreclose.—*Withington v. Tate*, L. R. 4 Ch. 288.

See BANKRUPTCY, 6; INSURANCE, 2; MARSHALLING OF ASSETS; PLEDGE. NAVIGABLE WATER—See NUISANCE, 1; STATUTE, 3. NEGLIGENCE.

It was the practice of consignees of coal by defendants' road to go along a flagged path by the side of the road at the station, and to assist in the unloading, which was done by tipping the coal into cells. The plaintiff was consignee of a coal wagon which could not be unloaded in the usual way, as all the coal cells were full. He told the station master that he must have some coals, and, no reply being made, he went to the wagon, took some coal from the top, and descended to the flagged path. The flag he stepped on was worn and gave way, and he fell and was injured. *Held*, that defendants were liable, although the plaintiff was not getting his coal in the usual manner.—*Holmes v. North-Eastern Railway Co.*, L. R. 4 Ex. 254.

See COLLISION, 2; LACHES; PROXIMATE CAUSE. NEGOTIABLE INSTRUMENT—See BOND.

NOTARY—See EVIDENCE, 3.

NOTICE—See COMPANY, 3; EXECUTOR AND ADMINISTRATOR, 3; MORTGAGE, 4; WAY.

NUISANCE.

1. The plaintiff, a riparian proprietor on a tidal navigable river, filed an information and bill to restrain the opposite riparian owner from building a jetty in the *alveus* of the river. It was not proved that the plaintiff's land would be seriously injured by a greater volume of water being thrown upon it. But the public navigation and that of the plaintiff would be interfered with. *Held*, that the suit was properly framed, and an injunction was granted with costs. *Semble*, the Attorney-General need not have been joined.—*Attorney-General v. Earl of Lonsdale*, L. R. 7 Eq. 377.

2. A tenant from year to year obtained an injunction from MALINS, V.C., against the erection of a circus, which was to last only a short time, on the ground that it would draw together a crowd of disorderly persons. Defendant appealed, the land having meanwhile been covered with permanent buildings. *Held*, that there was not sufficient ground for an injunction, and this having been granted, the appeal was not only for costs.

But an injunction against a circus, the noise of which was so loud as to be distinctly heard in the plaintiff's house when the windows and shutters were closed, was upheld, without a trial by jury. Since *Sir John Roll's Act*, 25 & 26 Vict. c. 42, this is not necessary if the evidence satisfies the court.—*Inchbald v. Robinson*. *Inchbald v. Barrington*, L. R. 4 Ch. 388.