

DIGEST OF ENGLISH LAW REPORTS.

defendant as agent in England of the so-called Confederate States, and for consequential relief, the defendant pleaded to the whole of the discovery and relief, that, by an act of Congress, the property of all agents of the Confederate Government was liable to confiscation, and that proceedings *in rem* were pending in the United States to confiscate his property on the ground of such agency. *Held*, that the plea was good as to the discovery, but bad as to the relief.—*United States v. McRae*, Law Rep. 3 Ch. 79.

2. To set aside for fraud a decree signed and enrolled, actual, positive fraud must be shown. Mere constructive fraud is not sufficient,—at all events after long delay.—*Patch v. Ward*, Law Rep. 3 Ch. 203.

3. A solicitor, acting on behalf of his client, contracted to pay the plaintiff a certain sum, such sum to be a charge on the client's land. The plaintiff filed a bill against the client and solicitor, alleging that the client was bound by the contract, but that the client denied that he was bound, on the ground that the solicitor had no authority to enter into such contract; and the bill prayed specific performance by the client, or otherwise, if it should appear that the solicitor was not authorized, then that the solicitor might be declared personally liable to perform the same. A demurrer by the solicitor was allowed, on the grounds, (1) that the plaintiff did not himself allege that the client was not bound; (2) that alternative relief could not be prayed against one defendant in case relief could not be obtained against another defendant; (3) that the remedy against the solicitor was at law.—*Clark v. Lord Rivers*, Law Rep. 5 Eq. 91.

See CONTRACT, 2; INJUNCTION.

ESTATE TAIL.—*See TAIL, ESTATE IN.*

EVIDENCE.—*See BILL OF LADING; FRAUDS, STATUTE OF; MISTAKE; NECESSARIES, 2; PAROL EVIDENCE; PRODUCTION OF DOCUMENTS; STAMP.*

EXECUTOR AND ADMINISTRATOR.—*See ADMINISTRATION.*

EXECUTORY TRUST.

By deed it was agreed that A. should raise out of certain hereditaments £800, and invest the same in the names of trustees on trusts to be declared for the benefit of R. for her life, remainder to her children, and as to R. for her separate use, and with all the powers for maintenance, and other powers and trusts usually inserted in a money settlement of the like nature, and, till such declaration should be made, A. to retain the £800 upon the like trust. No subsequent declaration of trust was ever

made. *Held*, that the deed was executory only, and that the settlement so directed ought to have limited the £800, after the death of R., amongst the children as tenants in common, and not as joint tenants.—*Mayn v. Mayn*, Law Rep. 5 Eq. 150.

FACTOR.

Cotton was consigned for sale by A. to B. B. deposited the bill of lading with C., and authorized him to receive and sell the cotton, and subsequently made a further pledge to D. of the balance of the net proceeds of the cotton by written order, assented to by C. *Held*, that the pledge to D. was valid as against A. under the Factor's Act (5 & 6 Vic. cap. 39).—*Portalis v. Tetley*, Law Rep. 5 Eq. 140.

FIXTURES.

Looms put up by the lessee of a mill during his term, and fastened to the floor by nails driven through the loom feet into wooden plugs fitted into the stone floor, are, though easily movable without injury to the freehold, fixtures which pass under an assignment of "the mill, fixed machinery, and hereditaments, with all looms and other machinery, fixed or movable," without the registering of the assignment under the 17 & 18 Vic. cap. 36, which requires all assignments of chattels to be registered.—*Boyd v. Shorrocks*, Law Rep. 5 Eq. 72.

FOREIGN STATE.—*See EQUITY PLEADING AND PRACTICE, 1.*

FORFEITURE.—*See EQUITY PLEADING AND PRACTICE, 1*

FRAUDS, STATUTE OF.

On a purchase of flour, J. W., an agent of the defendant, made the following entry in a book belonging to N.: "Mr. N., 32 sacks at 39s., to wait orders. J. W." In an action by N. for non-delivery of the flour, this entry was proved; and it was proved by parol evidence that N. was a baker, and the defendant a flour merchant; and a correspondence subsequent to the purchase was put in, relating to the delivery of the flour by the defendant to N. *Held*, that the entry was a sufficient memorandum to satisfy the Statute of Frauds; for that the parol evidence of the relative trades of the parties was admissible, and, independently of the correspondence, showed that the defendant was the seller, and N. the buyer, of the flour. *Vandenburgh v. Spooner*, Law Rep. 1 Ex. 316, considered.—*Newell v. Radford*, Law Rep. 3 C. P. 52.

GARNISHEE.—*See COSTS.*

HUSBAND AND WIFE.

1. The court will not settle the whole of a wife's fund on her and her children, where the husband is not insolvent, and has not been