

NOTES OF CASES—DIGEST OF THE ENGLISH LAW REPORTS.

Quære, per HARRISON, C. J., whether the widow was an accessory after the fact, and whether if so she was such an accomplice as to require corroboration according to the rule of practice.

Per WILSON, J., she was an accessory after the fact.

After some jurors had been peremptorily challenged by the prisoner, and others directed by the Crown to stand aside, and when only one had been sworn, one M. was called and challenged by the prisoner for cause. At the suggestion of the Court, and with the consent of counsel, M. was directed to stand aside by the Crown "till it was ascertained whether a jury could be empannelled without him, on the understanding that if it appeared necessary or expedient the challenge for cause should be tried in the usual way." After the prisoner had made nineteen peremptory challenges, a jurymen was called whom the prisoner desired to challenge peremptorily. The counsel for the Crown then asked the question if M's competency should be tried in the usual way. The prisoner's counsel objected, but the Judge ruled with the Crown, and he certified that he so ruled because it was in accordance with the arrangement under which the juror was directed to stand aside; that no exception was taking to this ruling; that he was not asked to note any objection to the mode of empannelling the jury; and that he was first asked to reserve the question after the assize had finished, when, upon the consent of counsel for the Crown, it was added to the other questions reserved. *Held*, that the jury was properly empannelled.

MANN ET AL. V. ENGLISH ET AL.

Mortgage—Right of mortgagee to maintain trespass or trover for cutting timber—Liability of wrongdoers.

The first count of the declaration alleged that one B. was the owner of certain lands, described, in fee simple, and mortgaged it to the plaintiffs in fee, subject to a proviso for redemption on payment of \$1,350, and interest, by instalments, as specified: that it was provided in the mortgage that B. should not, without the plaintiffs' written consent, cut down or remove any of the standing timber until the first four instalments of principal and interest up to a certain date should have been paid; and that if default should be made in paying the interest the whole principal should become due. It then alleged a default in payment of principal and interest, and that the defendants afterwards,

without plaintiffs' leave, and against their will, entered on their land and cut down and removed timber and trees, thereby injuring the land, and making it an insufficient security to the plaintiffs for the mortgage debt. There was also a count in trover for the trees.

It appeared that the mortgage was one under the Act respecting short forms, with the ordinary proviso for possession by the mortgagor until default, and a covenant not to cut timber, as alleged. The jury, in answer to questions, found that R. had cut down the timber, the other defendant, E. assisting him, in order to sell it and level the place depreciated: that the damage thus done was \$150; and that defendants did not purchase it from R. (as had been asserted) believing that he was entitled to sell it; but they said, after their verdict had been recorded against both defendants as these answers, that they did not intend to find E. guilty.

Held, that the action was maintainable, and the verdict properly entered against both defendants, the jury having found them to be joint wrong-doers: that the mortgagee was not restricted to his action on the covenant, but might certainly maintain trover; and *Semble* that, though not in actual possession, he might under the circumstances, maintain trespass also.

Quære, whether the first count was in case for injury to plaintiffs' revisionary interest, or in trespass.

Sembs, that it was a trespass; but *held*, that it disclosed a good cause of action.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS
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From the American Law Review.

(Continued from p. 292.)

LEGACY.

1. A testatrix bequeathed her personal property to her husband for life, and after his decease to be divided amongst her five children, share and share alike; and if any of her children should die without issue, then that child's share should be divided among the children then living; but if any child should die leaving issue, then that child should take its parent's share. The husband and the five children survived the testatrix, and the children survived the tenant for life. *Held*, that each child was absolutely entitled to a fifth of the property on the death of the tenant for life.—*Olivant v. Wright*, 1 Ch. D. 346; s. c. L. R. 20 Eq. 220.