or difference which might arise between the contracting parties should be referred to and settled by the engineer of the defendants, without whose certificate also, as to the sufficiency of the work done, no money was ever to be paid to the plaintiff's. The contract also provided for its summary determination by the defendants, in case of neglect or delay on the part of the plaintiff's. The defendants put an end to the contract on the ground of alleged neglect, &c., upon a bill filed by the contractors, alleging fraud on the part of the engineer, in unduly withholding certificates, and praying an account of work done, &c.

Held, per Stuart V. C., confirming the opinion of *Erle J.*, that the case of the plaintiff had wholly failed upon the evidence.

Bill dismissed with costs.

L. C. PERRY HERRICK *v.* ATTWOOD. *Dec.* 17, 18, 22, 23.

Mortgagee—Priority—Negligence—Possession of title deeds —13 Eliz. cap. 5.

A person taking a legal mortgage without the title-deeds, is not thereby postponed to a subsequent mortgagee without notice, but with the deeds, unless the first mortgagee has been guilty of fraud or gross negligence.

But if the deeds were left with the mortgagor to enable him to raise another sum to take precedence of the mortgage debt of the party so leaving them, he will be postponed to any subsequent mortgagee, even though his mortgage may not have been within the understanding between him and the mortgagor.

An executor and trustee who had retained monies of *cestuis que trust* in his hands, with their consent, and without being pressed so to do, gave them a mortgage of his own estate by way of security, but it was agreed at the time that he should retain the title-deeds for the purpose of making another mortgage which should have priority; he did not make that mortgage, but made several others of much larger amount.

Semble, the first mortgage was within 13 Eliz. cap 5.

V. C. S. STURGE *v.* MIDLAND RAILWAY COMPANY. *Jan.* 28.

Specific performance—Railway Company—Contract to grant free pass—Waiver—Demurrer.

S., a corn merchant carrying on business in the immediate vicinity of the defendants' line of railway, signed an agreement, whereby, in consideration of receiving from the defendants yearly, during so long as he should carry on business at his then establishment, a free pass over their line, he promised, so long as the scale of charges of the defendants and of a certain Canal Company bore the same proportion to each other which they then did, to have his corn carried by the defendants in preference to the said Canal Company. Subsequently at the request of the defendants he made a money payment, by way of nominal consideration, for the said pass, which the defendants after the lapse of some years ultimately refused to renew. Upon his bill for specific performance of the said agreement (which had never been executed by or on behalf of the said railway company).

Held, that the agreement was unilateral in its nature and uncertain in its terms, and could not be specifically enforced. A general demurrer for want of equity accordingly allowed.

M. R. WHITLEY *v.* LOWE. *Jan.* 14, 15, 18.

Statute of Limitations—Acknowledgment by payment.

A suit for the winding up of partnership accounts was instituted between the representatives of deceased partners. A receiver was appointed in June, 1834, and by common consent paid the assets which he got in to the repesentatives of one of the deceased partners, and the suit was not further prosecuted.

The executors who received these payments claimed a further debt from the estate of the other partner, which was barred by Statute unless the receiver's payments were sufficient to take it out of the Statute. There was an independent claim for a lien which the evidence was not considered by the Court to establish, and it was held that payments by the receiver within 20 years did not take the case out of the Statute.

V. C. S. VINT *v.* PADGETT. *Feb.* 20, 22.

Mortgage—Foreclosure—Redemption.

A. being seized of two estates, X. and Y., mortgages X. to B., and afterwards mortgages Y. to C. He subsequently mortgages his equity of redemption both in X. and Y. to D. The two original mortgages ultimately become vested in V., who files his bill to foreclose D.

Held, that D. was not entitled to redeem X. without also redeeming Y.

V. C. S. EDDELS *v.* JOHNSON. *March* 19.

Will—Omission of name—Rectification—Administrative Debts—Liability of lands specially divided.

A testator having six children makes a specific devise to each of them by name. In a subsequent part of his will he makes a specific gift to two of them A. and B. and gives the residue of his estate "to his said four children" mentioning only C. D. and E.

Held, that the name of the omitted child F. ought to have been inserted and that F. was entitled to one fourth of the residue.

Where a testator's personal estate is insufficient for the payment of debts, and there is no duration as to the payment of debts in the will, the real estate specifically devised as well as that comprised in the residuary gift must contribute rateably with the personal property specifically bequeathed in payment of such part of the debts as remain unpaid.

V. C. W. HALLIWELL *v.* PHILLIPS. *March* 18, 19.

Equitable waste—Ornamental timber.

In the case of woods or plantations standing upon property which has been acquired by various purchases at different periods, the fact of the purchaser not having cut down the woods is not sufficient of itself to lead to the inference that they were left standing for ornament.

Some act is necessary to show the intention of the purchaser in such a case to impress an ornamental character upon the timber.

COMMON LAW.

EX. LEY ET AL *v.* PETER.

Statute of limitations—Tenancy at will—Authority of Land Agent.

The defendant's grandfather had been owner of two undivided thirds of a meadow and held the other third under a lease which expired in 1818. The father of defendant, and defendant succeeded in their turn; and at the time the action was brought the defendant was owner of the two thirds, and occupied the whole, no rent having been paid since 1818. The only evidence relied upon for the plaintiffs, was a letter of the land agent who managed the defendant's property written within 20 years of the action being brought in which he said, the defendant "would no doubt accept a lease of Ley's one third at a fair rack rent." *Held*, in ejectment for the one third.

First. That this was not an acknowledgment of title within 3 & 4 Wm. IV. ch. 7 sec. 14, as not being signed by the person in possession, but only by an agent.

Secondly. That the land agent has no authority by virtue of his employment, as such to write such a letter. MARTIN B. *dissentiente.*

Thirdly. That the letter was no evidence of the tenancy at the will of the plaintiff.

Q. B. BARING ET AL *v.* GRIEVE. *April* 23

Statute of frauds—Guarantee—Consideration not expressed.

The defendant wrote and signed a letter in 1845, addressed to the managing committee of Lloyds thus: "I engage to hold myself responsible for any debts which my son may contract in your establishment connected with the same." *Held*, that no consideration appeared on the face of the document which was therefore void as a guarantee under sec. 4, of the statute of frauds.