executor is appointed the executor takes nothing in his character of personal representative."

In the next case, *In the goods of Von Buseck*, p. 211, the President held that a will of a foreigner, executed abroad according to the formalities required by English law, but not in conformity with the law of his own country, was invalid; that Imp. 24 & 25 Vict., c. 114, "An act to amend the law with respect to wills of personal estate made by British subjects," did not apply, for here the testatrix was a foreigner; and that sect. 2 of the Naturalization Act, 1870, (cf. R. S. O. c. 97) did not bring the case within the former enactment." As to this he said: "Such an interpretation must, I think, be rejected, unless it were made quite plain that the English legislature intended, with reference to personal property, that an alien should be able to make a will, in a form which is not in conformity with the law of his country. Of course an English Court might be compelled by plain language to give such a construction to an enactment, but it is not to be presumed that anything, which is so contrary to the comity of nations, has been intended by the English legislature, and therefore, I reject that as not being the meaning of this section."

In *In the goods of Brake*, p. 217, where a testator appointed W. McC., of Canonbury, an executor, and there was not in fact any person of that name, but there was a T. McC., of Canonbury, and a W. A. McC., son of the former. The President admitted parole evidence to show who was intended, citing as authority the words of Cairns, J.C., in *Charter v. Charter*, L. R. 7 E. & I. 377:—"The Court has a right to ascertain all the facts which were known to the testator at the time he made his will, and thus to place itself in the testator's position, in order to ascertain the bearing and application of the language which he uses, and in order to ascertain whether there exists any person or thing to which the whole description given in the will can be reasonably, and with sufficient certainty, applied."

The cases on points of practice in the number before us have been already noted among our Recent English Practice Cases, and therefore we have now come to an end of the Law Reports for 1881.

On January 2, were issued two small numbers of the Law Reports, comprising 19 Ch. D., p. 1 to p. 60; 8 Q.B.D., p. 1 to p. 69; and 7 P D., p. 1 to p. 5.

COSTS OF INCUMBRANCERS.

In the first of these, the first case which appears to require notice is *Johnstone* v. *Cox*, p. 17, the report of which, in the Court below, is contained 16 Ch. D. 571. It was an action to establish a charge in favour of the plaintiff in priority to other incumbrancers on a certain fund. Bacon, V.C., decided that another incumbrancer had priority over the plaintiff, but as to costs, he held that the fund must be cleared by first paying the costs of all parties, and that what remained must go to the incumbrancers in the order of their priorities. The Court of Appeal reversed this order as to costs, Jessel, M.R., saying:—"As an ordinary rule the costs of incumbrancers are allowed to be added to their securities, if any difficult questions arise as to the priority of incumbrancers, and so on; and unless there has been something vexatious, or something unusual in his conduct, the incumbrancer gets his costs if the fund is sufficient to pay them." And the Court refused to depart from this rule, though some of the incumbrancers, having taken a security on an insufficient fund, might thereby lose both debt and costs.

PRESCRIPTION ACT.

In the next case, *Laird* v. *Briggs*, p. 22, a question arose as to the amendment of pleadings, which we have already noted among our Practice Cases, 17 C.L.J., 346. The Court of Appeal also intimated that, though it was not necessary to decide the point, they must not be taken to agree with the view of