

RECENT ENGLISH DECISIONS.

be supported: "The father, when he made the settlement, must have known that if the son could not pay the balance to the bank, he himself, if the settlement was sustained, would have substantially nothing available to meet the liability under the guarantee but such dividend as he could get from the son's estate;" the son had gone into insolvency. The M. R. and Cotton, L. J., in their judgments, discussed *Price v. Jenkins*, L. R. 5 Ch. D. 619, cited on the argument. It had been decided under 27 Eliz. c. 4, that a voluntary conveyance, though honestly and fairly made, was fraudulent as against a subsequent purchaser from the settler. *Price v. Jenkins* qualified that doctrine, and decided that the grantor's undertaking the liability for rent was sufficient to support a settlement which was open to no objection but that of being voluntary. But in the present case, the M. R. and Cotton, L. J., held, that whatever may be held under 27 Eliz. c. 4, the undertaking the liability to rent is not a good consideration within 13 Eliz. c. 5. In the language of the latter learned Judge:—"A man who makes a settlement without leaving himself enough property to pay his creditors, must be considered to do it with an intent to defeat or delay them, and a conveyance of leaseholds made for no consideration, cannot be brought within the exception in the statute by the mere fact that the grantee becomes liable for the rent."

MORTGAGE—MERGER IN JUDGMENT.

Passing by some cases on points of practice, which will be found noted among our Recent English Practice Cases, the next case to be mentioned is *Popple v. Sylvester*, p. 98. Here by a mortgage deed, securing a debt of £3000, the mortgagor covenanted to pay the £3000, with interest at seven per cent. on the day provided for payment; and, by a separate covenant, that in case the £3000 should not be paid on the day named, the defendant could, "so long as the sum of £3000, or any part thereof, should remain due on the security of the said indenture," pay interest for

the £3000, or for so much as should for the time being remain unpaid, at the rate aforesaid. On September 23, 1869, the mortgagee obtained judgment for £3145, the amount then due for principal and interest. In October, 1869, he issued a sequestration under the judgment against the defendant's property. On March 1, 1882, the sequestrator paid the plaintiff the £3145, with interest at four per cent. (the legal rate). The plaintiff now sought to recover the difference between interest on the £3000, at the rate of seven per cent., as secured by the mortgage deed, and the interest at the rate of four per cent. paid to the plaintiff by the sequestrator. The mortgagor argued that the plaintiff could not recover, because the mortgage debt was merged in the judgment. Fry, J., however, gave judgment for the plaintiff, for that although the personal covenant to pay the £3000 was extinguished by the judgment, the charge remained notwithstanding, and, therefore, the express covenant "so long as the £3000 should remain due on the security of the indenture," continued in force. "The only ambiguity," he says, "arises from the fact that part of the security is extinguished by the judgment, and part remains."

COSTS—ADMINISTRATION.

The next case, *Croghan v. Allen*, p. 101, is on the same subject as the recent case in our Chancery Division, of *Re Woodhall*, before the Divisional Court, noted 18 C. L. J. 282. Though decided before *Re Woodhall*, it was not probably reported at that time; at all events, it does not appear to have been cited on that occasion. In both cases the ruling of Lord Westbury in *Bartlett v. Wood*, 9 W. R. 817, is cited, and followed by the Court, namely, that no costs should be given out of the estate in administration proceedings, unless it appears that the litigation has been in its origin directed with some show of reason, and a proper foundation for the benefit of the estate, or has in its result conducted to that benefit. In *Re Woodhall*, however, the proceed-