

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

(Registered in accordance with the Copyright Act.)

POWER OF APPOINTMENT—EXERCISE OF POWER BY WILL—INTENTION—
BLENDING OF APPOINTED PROPERTY WITH TESTATOR'S OWN PROPERTY—
WILLS ACT, 1837 (1 VICT. C. 26), S. 27—(R.S.O. C. 128, S. 29).

In re Marten, Shaw v. Marten (1902) 1 Ch. 314. The question was whether a testatrix who had a general power of appointment had exercised it. By her will she made an express appointment of part of the funds subject to the power, and after bequeathing some specific and pecuniary legacies she made the following bequest. "As to the rest and residue of my real and personal estate, I devise, bequeath and appoint the same, subject to the payment thereof of my debts, funeral and testamentary expenses unto Henry Shaw." Henry Shaw having predeceased the testatrix, it was necessary to determine whether the residue of the fund not expressly appointed, was covered by the residuary bequest, or whether it devolved on those entitled in default of appointment. Byrne, J., decided that the residuary clause did not operate as an appointment of the residue of the fund, and with him agreed Williams, L.J., but the majority of the Court of Appeal (Cozens-Hardy and Romer, L.JJ.) came to the conclusion that the residuary clause amounted to a blending of the property subject to the power with the testatrix's own, and that it was an effectual execution of the power under the Wills Act, 1837 (1 Vict. c. 26), s. 27, (R.S.O. c. 128, s. 29), and that, therefore, subject to the payment of debts, legacies and testamentary expenses, the appointed fund, so far as it had lapsed by the death of Henry Shaw, went to the testatrix's next of kin, and not to those entitled on default of appointment.

COSTS—EXPROPRIATION OF LAND—WARRANT FOR DELIVERY OF POSSESSION—
JUD. ACT, 1890 (53 & 54 VICT. C. 44), S. 5—(ONT. RULE 1130).

In re Schmarr (1902) 1 Ch. 326, the Court of Appeal (Williams, Stirling, and Cozens-Hardy, L.JJ.) held that under the Judicature Act, 1890, s. 5, (Ont. Rule 1130), the High Court has now discretion-