

DIGEST OF ENGLISH LAW REPORTS.

of the proceeds of the bills proportionate to its share of the purchase money.—*In re European Bank. Ex parte Oriental Commercial Bank*, L. R. 5 Ch. 358.

See APPROPRIATION: ASSIGNMENT.

BOND—See RACING DEBT.

BOTTOMRY—See INSURANCE, 3.

BUILDING RESTRICTIONS—See INJUNCTION.

BURDEN OF PROOF.

The plaintiff demised a dwelling-house to A., who covenanted in the lease that he would not permit any sale by public auction to take place on the premises without the consent in writing of the plaintiff; and there was a proviso for re-entry in case of breach of covenant. A. underlet to the defendant, and assigned his goods upon the premises to B., C., and D., who sold them by public auction on the premises, bills having been previously posted there. In an ejectment for forfeiture, upon the above facts, *held*, that the plaintiff should be nonsuited [by Kelly, C. B., Martin and Pigott, BB.] on the ground that there was no evidence that the sale was by the permission of the lessee; by Willes, J., on the ground that being the case of a forfeiture, the burden was on the plaintiff of showing that the sale was without the consent of the plaintiff; by Brett, J., Channel and Cleasby, BB., on both grounds. (Exch. Ch.)—*Toleman v. Portbury*, L. R. 5 Q. B. 288.

BURIAL GROUND—See REVERTER.

CALL—See ASSIGNMENT.

CHARGE.

In 1802, there were two judgments (for £1,000 and £2,000) against A. In 1809, A. made a voluntary settlement of his real estate, reserving to himself a life interest, in which it was recited that said estates were subject to these charges, amounting in the whole to £3,000. In 1818 and 1819, he executed two mortgages on his real estate. The judgment of 1802 for £2,000 was paid out of A.'s life estate under the settlement. At the suit of a judgment creditor in 1822, a receiver was appointed, and part of the land sold and applied to his debt. A. died in 1861. The petitioner was a judgment creditor. *Held*, that the judgments of 1802 were charges on the inheritance, and that so much of them as had been paid out of the life estate ought to be paid by the inheritance for the benefit of the creditors whose demands affected only the life estate; also that the statute of Elizabeth against fraudulent conveyances enabled A. to defeat the voluntary settlement so far as the mortgages extended, but that the doctrine of marshalling

did not apply.—*Dolphin v. Aylward*, L. R. 4 H. L. 486.

CHARITY—See CY PRES.

CLASS.

Two marriage settlements were made; by one, the real estate of the husband, subject to certain life estates, was settled upon the first and other sons of the marriage successively in tail male; by the other, which recited the first, the wife's real estate was settled, subject to a life interest for her, to the use of all the sons (except the eldest or only son) and daughters of the marriage, as tenants in common in tail; and if any such son or daughter should die without issue, or if any such son should become an eldest son before he should attain the age of twenty-one, then as to the share of such son or daughter to the use of the survivors as tenants in common in tail. After the husband's death, his eldest son entered into possession of his estate and died; the next son succeeded to the husband's estate, having attained twenty-one, and died leaving a son: two daughters of the marriage survived. Upon the wife's death, it was *held*, that the class entitled to the wife's estate was to be ascertained at her death, which was the time of distribution; and that the two daughters were the only ones entitled to a share.—*In re Bayley's Settlement*, L. R. 9 Eq. 491.

CODICIL.

1. A testator, having made a will and codicil, executed in the presence of two witnesses a document to the following effect: "I hereby make a free gift to Maria Robertson of sixty pounds." The court, being satisfied by parol evidence that the testator intended the gift to be dependent on his death, granted probate of the paper as a codicil to the will.—*Robertson v. Smith*, L. R. 2 P. & D. 43.

2. A testatrix by her will gave a legacy to her niece M.; by a codicil she revoked the bequest, and gave it to her two nieces equally; by another codicil she declared, "My wish is, that in the event of the name of M. having been erased from my will, it be reinstated as previously there placed." *Held*, that the erasure of the name of M. never having been made, the last codicil was inoperative.—*Wilkinson v. Schneider*, L. R. 9 Eq. 423.

COLLISION.

Two vessels were close hauled on the same tack, one ahead of the other. The head vessel went as near a shoal as she could and went about; as she was coming round, the other vessel ran into her. *Held*, that it was the duty of the rear vessel to go about when she