

M. R. BELL v. CLARKE. April 21.
Covenant to bequeath—Construction.

On a covenant to devise and bequeath one full fourth part of all the real and personal estate which the covenantor should die possessed of.

Held (having regard to the context) that a fourth in value, and not an undivided fourth, was meant.

V. C. W. FERIS v. GOODBURN. April 23, 24, 26.

Ademption of legacy—Presumption against double portions—Admissibility of parol evidence.

A legacy given by way of portion by a testator to his adopted daughter, to be paid on marriage, (she being at the date of the will unmarried.)

Held, that he was deemed *pro tanto* advances made to her husband subsequent to the marriage, she having married in the testator's life time.

M. R. GREAVES v. WILSON. March 15, 16.

Specific performance—Conditions of Sale—Rescinding.

Under a condition that, if the purchaser should within the time limited, show any objection and insist thereon, the vendor should be at liberty to rescind.

Held, that the vendor was not entitled to rescind immediately on receiving the requisitions without giving the purchaser an opportunity of waiving any that were untenable.

Held, also, that what the requisition ultimately insisted on, was merely that mortgages should join, the vendor was not at liberty to rescind on this ground.

Semble, that he might rescind on account of requisitions which would be tenable in the absence of any condition as to rescinding, even though he might not be able to satisfy them, if such requisitions should be of an unreasonable character in respect of expense or otherwise.

V. C. K. LAW v. THROPE. April 20, 21.

Construction—Children and their issue—Period of distribution.

Where a testator gives residuary property to trustees, upon trust, to pay the interest to one for life, and after her decease divide the same among her children and their issue; such children and their issue, to be entitled as amongst themselves to the benefit of survivorship, and accruer of surviving shares, all the children coming into *esse* during the life time of their mother are entitled as tenants in common, with benefit of survivorship.

L. J. SWINFEN v. SWINFEN. March 16, 18, 25., April 22.

Attorney and client—Authority to compromise—Specific performance

An attorney has no authority to compromise a suit without the consent of his client. If an agreement to compromise is sought to be enforced in a court of equity, the case will be tried on the ordinary principles which guide the court in cases of specific performance.

M. R. CHEALE v. KERWOOD. April 21.

Specific performance—Nudum pactum.

An agreement by A. to transfer shares to B. in consideration that B. will bear all future liabilities arising out of them, is *an nudum pactum*.

If money had passed either from A. to B., or from B. to A., there would have been sufficient consideration to support the contract on either side.

V. C. S. GARRETT v. MELHUIH. April 27.

Shipping—Freight—Damage in transitu.

The Shipper of goods cannot resist a demand for freight, upon the ground that such goods were damaged *in transitu*, even in a case where the effect of such damage may have been to render

them totally unfit for use. His remedy lies in an action for negligence against the shipowner.

V. C. W. JOHNSTON v. MOORE. April 27.

Will—Construction—Conversion—Postponement—Produce—Partnership capital.

Testator gave all his real and personal estate to trustees upon trust, as soon as conveniently might be, to sell the real estate and such part of the personal estate as should be in its nature saleable, and directed them to collect and convert into money such part of his personal estate as should not consist of money, to invest the proceeds and pay the annual income to his wife during her life. The trustees were also authorized to postpone the sale, calling in, collection, or conversion, of any part of testator's real and personal estate, as they should think fit, and to pay the rents dividends and *produce* of the same, or any part thereof not sold, called in, collected, and converted, to the same person, &c., and in the same manner as the income arising from the proceeds of the sale, &c., would be payable. Testator who died in November, 1856, was a member of a partnership, which by the articles was to continue till the 1st of January 1858, it being provided that, upon the death of any partner during the term, the partnership should not cease, but the representatives of the deceased partner should be entitled to his share in the capital and profits up to the expiration of the term; and that the survivors should pay to the representatives the balance appearing to his credit at the end of the term by three equal yearly instalments from the end of the term, with interest at 5 per cent. in the meantime on the unpaid balances.

The executors did not sell or call in after his death the testator's interest in the partnership.

Held, that the widow was entitled to all the balances standing to the credit of the testator's account upon his partnership, capital as "*produce*" of the capital, under the postponement clauses, and also to interest at 5 per cent. upon the capital and balances.

M. R. MORRIS v. MORRIS. May 1.

Power of sale—Time—Postponement, in order to avoid sale at disadvantage—Infant.

An infant, *cestui que trust*, aged 10 years, who was entitled upon marrying or attaining 21, to the proceeds of certain real estate which was directed to be sold so soon as conveniently might be after the death of a tenant for life, filed her bill upon the death of such tenant for life, praying that the trustees might be at liberty to postpone the sale, upon the ground that the property was likely to increase materially in value.

Ordered, that the sale should be postponed until the further order of the Court.

V. C. S. RAWLINS v. WICKHAM. May 1, 3, 4.

Partnership—Contract—Misrepresentation—Fraud—Costs.

V. and B. who were partners together as bankers, received R. into co-partnership with them, having previously made to him various untrue representations as to the position and prosperity of their firm, which was in fact, at the time, in an extremely critical position.

Held, that the contract must be set aside *ab initio*, but without costs; the plaintiff's conduct not having been entirely free from blame, and the allegations of fraud contained in his bill, being of a character unwarranted by the circumstances of the case.

It is no answer to a charge of misrepresentation, that the plaintiff might by inquiry have detected the untruths complained of; it being in the very nature of misrepresentation to check inquiries which might otherwise have been made.

V. C. S. SCOTT v. THE CORPORATION OF LIVERPOOL. April 19.

Building Contract—Arbitration clause—Jurisdiction of ordinary tribunals, how far excluded—Award—Contract.

The plaintiffs a building firm, had contracted for and undertaken the execution of extensive works for the defendants, the corporation of Liverpool. The contract provided, that every dispute