the case, by reason of not taking into the account the influence of other principles, concerning which, being ignorant of their existence, he could make no calculation.

Some men have minds so constituted by nature, that they are wholly unable to see the force, or even the existence, of any single legal principle, much less to understand the combined action of many. Such men are out of place in the profession of the law, though they may have high capacity for some other calling. But other men who discern principles clearly, and reason well upon them, commit errors, as we have just intimated, from not having learned all the principles, or, what is equally common, from a failure to call some of them up when wanted. Now, these persons are usually very confident of their conclusions; they feel, in fact, certain; until age and experience have taught them the use of caution. And here we see how modesty enlarges with true knowledge. Standing on a little point of some bay in the ocean of truth, far inland, the untaught aspirant for the forecastle pictures not to his vision the mighty billows and waters, apparently enclosed by no land, that roll beyond.

Whatever view we take of the subject discussed in this series of articles, it lifts itself, in importance, above almost all other subjects connected with legal science. And all persons must admit that it is too little understood. He who has thoroughly mastered the elementary principles of the law, will readily learn the rest from his text books and digests, as cases arise in practice; while he who understands not the principles, will stumble at every step, whatever other legal knowledge he may possess.

J. P. B.

ABSTRACTS OF ENGLISH DECISIONS.

Action—Malicious Prosecution.—An action for falsely and maliciously procuring the plaintiff to be adjudged a bankrupt, may be maintained, though the affidavit before the Commissioner of Bankruptcy did not show an act of bankruptcy, and the Commissioner made a mistake in point of law in

adjudging plaintiff to be a bankrupt. *Farlie* vs. *Banks*, 19 Jurist, 331, Queen's Bench.

Admiralty—Foreign Law—Shipping, Lien of Master.—The adoption of the law of a foreign country, as in the case of a law giving the master a lien for his wages, is discretionary with a Court of Admiralty, and not to be resorted to where it would operate with injustice. *The Johannes Christoph*, 19 Jurist, 192. Court of Admiralty.

Common Carrier—Carrier's Act.—The enactment in the Carrier's Act of 11 Geo. 4, and 1 Will. 4, c. 68, that no common carrier by land, for hire, shall be liable for the "loss" of certain descriptions of articles above the value of £10, unless delivered as such, and an increased charge for carriage paid or accepted, must be understood with reference to a loss of the article "by the *carrier;*" such as by the abstraction by a stranger or by his own servants, not amounting to a felonious act, or by the carrier or his servants losing them from vehicles in the course of carriage, or by mislaying them, so that it was not known where to find them when they ought to be delivered, &c., and does not extend to every loss of any description whatever, occasioned "to the *owner*" of the article by the non-delivery, or by the delay of the delivery of it, by the neglect of the carrier or his servants. Quære, whether the loss spoken of in this section must be a permanent or may be only a temporary loss. *Hearn* vs. *The London and S. W. R. R. Co.*, 19 Jurist, 287. Exchequer.

Poor—Justice—Apprentice.—The assent by justices to the binding of a child, under the 43 Elizabeth, is a judicial act, and must therefore show on its face, that the justices were at the time acting within the local limits of their jurisdiction. Where, consequently, the justices in their assent described themselves as justices "for the county." *Held*, that the assent was bad, and no settlement gained under the indenture. *Overseers of Staverton* vs. *Overseers of Ashburton*, 19 Jur. 233. Queen's Bench.

Powers.—Where a general power to appoint had been exercised as to a portion of the fund subject to it, but not as to the other part, and the deed exercising the appointment reserved a power of revocation and new appointment over the portion of the fund appointed, it was held that general words in a subsequent deed of appointment executed by the same appointor, purporting to exercise all powers of appointment given or limited to him, or under or by virtue of which he had power to appoint, did not operate as an exercise of the power of revocation of the appointment of the portion

of the fund already appointed, but only of the power to appoint the portion still remaining unappointed. *Pomfret* vs. *Perring*, 19 Jur. 173. Court of Appeal in Chancery.

Power—Revocation and New Appointment.—By law, a power which, in any mode and to any extent, has been exercised revocably, and the revocable appointment made under which has been revoked, without being operated upon, is generally, if not universally, of the same force, and exercisable in the same manner as if the revoked appointment had not existed; and a power cannot be necessarily exhausted by a revocable act, although exercising otherwise the power to the utmost, more than by a conditional act, or by an act of merely partial execution—*i. e.* of execution in no sense and in no possibility full and complete. *Evans* vs. *Saunders*, 19 Jur. 265. Court of Appeal in Chancery.

A power to appoint by deed or will does not constitute two separate and distinct powers, but is a single power, with a restriction on its exercise, requiring it to be exercised by one or other of those two instruments, but leaving to the donee the option, within the limits of that restriction, to choose which instrument he will use in exercising the power. *Id.*

Where, by the terms of the reservation of powers of revocation and new appointment, the donee is authorized to exercise them, at his option, either by the same or by different deeds, if he first exercises by deed the power of revocation, the power of new appointment continues to subsist as a valid operative power, capable of being exercised by a subsequent deed; and admitting that it is as competent to the donee of such powers, exercising only the power of revocation, to release, extinguish, or destroy the power of appointment which was reserved to him, yet the mere exercise of the power of revocation as above will not *per se* have any such effect. *Id.*

Where a person has a general power of appointment by deed, whether it is a primary power, (*i. e.* a power preceding the uses declared in default of appointment,) or be a power of appointment connected with a power of revocation, and following the uses declared by the instrument creating the power, and exercises that power of appointment, and by the deed exercising that power reserves to himself a new power of appointment, whether such new power be reserved as a primary power, or as connected with a power of revocation, such power so reserved is, to all intents and purposes, a new power, newly created by him, and is not the old power which he has exercised; and it is equally a new power, whatever the kind or degree of restriction which he has thought fit to impose on its exercise—*i. e.* whether such

restriction be precisely the same in kind and degree as that imposed on the old power, or be greater or less in kind or degree. *Id.*

A general power of appointment over the fee will not be exhausted by an appointment to uses exhausting the fee, but reserving a power of revocation. *Id.*

Where a general power of appointment by deed or will has been exercised by an appointment by deed, reserving a power of revocation and appointment to new uses to be exercised by deed only, the creation of this last power to appoint by deed only cannot, without clear evidence of intention, be taken as operating to destroy the original power to appoint by deed or will; and, semble, that if it is to be taken at all affecting such original power, it is to be considered merely as in substitution of that branch of the original power which it purports to replace, namely, the power to appoint by deed. *Id.*

Semble, that two general powers of appointment in fee can exist in the same person at the same time. *Id.*

Will—Precatory Charitable Trust.—Where on the face of a will there is nothing to show that any trust or purpose was intended by the testator, other than a gift of the whole beneficial interest to the legatee, the plaintiffs, in order to succeed in setting the bequest aside, must prove by evidence a trust expressed, or such an engagement, by words or by silence, as will authorize the Court to say that the legatee undertook to do that which the law prevented the testator from imposing upon her—an express trust to devote the residue to an illegal charitable purpose. *Lomax* vs. *Ripley*, 19. Jur. 272. V. Ch. Stuart.

Where the evidence, parol and documentary, merely proves the wishes and intentions of the testator, and that he refrained by instruction and premeditation from declaring any trust, or imposing any obligation, or exacting any promise from their fulfilment from the legatee, and also that the legatee was, from the impulses of her own mind and disposition, bent on fulfilling the testator's wishes and intentions if she had the power, it falls short of what is required to establish the existence of any secret or honorary trust, the performance of which could be compelled on the footing of the breach of a promise or engagement which would have been binding on the conscience. *Id.*

Where a gift is in terms absolute, but accompanied with an expression of wishes in favor of another object, and a confidence in the honor and

justice of the legatee, unless the language is so express as to be in terms imperative, and to exclude all option or discretion, they cannot bind the legatee or create a trust. *Id.*

Will—Attestation by a Legatee.—A testator by his will gave a legacy; he afterwards made a codicil, which was attested by the legatee. *Held*, that this did not affect the legacy. *Gurney* vs. *Gurney*, 19 Jurist, 298. V. Ch. Kindersley.

Shipping—Freight.—A cargo of wheat was shipped at a foreign port to be brought to the United Kingdom. The shipment took place when the vessel was in quarantine, in an open roadstead, and was made out of barges. The bill of lading was in the ordinary English form, signed by the master, the material part being as follows:—"Shipped, &c., in and upon the Prompt, whereof, &c., and now riding at anchor at Odessa, and bound for the United Kingdom, 3700 chetworths of wheat in bulk, to be delivered, &c., at the port of destination, (the act of God, &c., and every other danger of the seas, &c., excepted,) unto, &c., or their assignees, paying freight for the goods as per charter-party." By a memorandum in the bill of lading, *the quantity and quality was declared to be unknown to the master.* The provision in the charter-party, as to the freight of wheat, was, that it was to be according to the London-Baltic printed rates, which is a certain well known rate per quarter. The ship with the cargo arrived at Gloucester, and the wheat, on being accepted by the assignee of the bill of lading, was found to have increased in bulk by an admixture of water during the voyage, but there was no evidence to show from what cause this arose, or proof of any custom or usage relative to the payment of freight under such circumstances. *Held*, that freight was payable for the wheat according to its bulk at the time of loading, and not according to its bulk at the time of its delivery. *Gibson* vs. *Sturge*, 19 Jurist, 259. Exchequer. Martin, B., diss.

Shipping—Registry Acts.—The Court of Chancery cannot entertain the question, whether a ship was properly registered, but must take the registration as conclusive. *Combs* vs. *Mansfield*, 19 Jur. 271. V. Ch. Kindersley.

The Court will not relieve against the operation of the Ship Registry Acts, on the ground of equitable fraud or of notice. *Id.*