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SETTING ASIDE SALES IN CONTRAVENTION OF S. 99 OF THE TRANSFER OF PROPERTY ACT.

The reference to the Full Bench in *Ashutosh Sikdar* v. *Behari Lal*[1] was the result of the decision of the Privy Council in *Khiaraj Mal* v. *Daim*,[2] and the opinion of the learned Acting Chief Justice is based on the authority of that decision. But their Lordships of the Judicial Committee say nothing as to *how* or *when* a sale held in contravention of S. 99 of the Transfer of Property Act is to be set aside. In an elaborate judgment, Justice *Mookerjee* notices a long array of conflicting Indian decisions and, apart from the authority of the decision in *Khiaraj Mal* v. *Daim*, [2] he comes to the conclusion that a sale in contravention of S. 99 is not a nullity, but is only voidable. But few of these decisions help to solve the further question, how the sale is to be avoided. Having regard to the decision of the Judicial Committee in *Prosunno Kumar Sanyal* v. *Kali Das* [3] an application under S. 244, Civil Procedure Code, would seem to be the proper course, whoever the purchaser may be— the mortgagee himself or a stranger—*Mayan Pathuti* v. *Pakuran* [4].

Within what time, then, should such application be made? The Calcutta Full Bench say, *before confirmation of the sale*, unless the applicant proves that owing to fraud or other reasons he was kept in ignorance of the sale or confirmation. This is also the view indicated in *Mayan Pathuti* v. *Pakuran* [4] and acted

1. (1907) I. L. R. 35 C. 61.
2. (1904) I. L. R. 32 C. 296.
3. (1892) I. L. R. 19 C. 683.
4. (1899) I. L. R. 22 M. 347.

on by the Allahabad High Court in *Kishan Lal* v. *Umrao Singh.*[1]

It is difficult to see why this limit should be fixed. The observation that " the decree-holder can hardly take up the position that the judgment-debtor is estopped by reason of his omission to take objection " applies as much after the confirmation as *before* it. *Mookerjee* J. says ' If the judgment-debtor was aware of the sale and if it has been confirmed with his knowledge, he must be taken to have been a party to that order ' and *Subrahmanya Aiyar* J. in *Mayan Pathuti* v. *Pakuran* [2] observed ' the order confirming the sale is final and concludes the appellants from seeking the relief to which they would have been otherwise clearly entitled.' But the confirmation can be no bar unless there is any rule of law requiring the judgment-debtor to take the objection before confirmation. An order under S. 312, Civil Procedure Code, only concludes objections under S. 311, and there will be force in this argument if it is to be held that the contravention of S. 99 of the Transfer of Property Act is a mere *irregularity* which will be cured by the certificate of sale, especially when a stranger purchasing *bona fide* is concerned. (Cf. *Balkrishna* v. *Masuma Bibi* [3] ; *Rewa Mahton* v. *Ram Kishen Singh*[4]). It would obviously be going too far to suggest that when speaking of it as ' not a cause of nullity * * * but a cause of irregularity in procedure only ' (*Khiaraj Mal* v. *Daim* [5]) the Privy Council meant that the case fell within S. 311, Civil Procedure Code ; and *Mookerjee* J. himself holds that ' the only element which it is necessary for the owner of the equity of redemption to prove to obtain a reversal of the sale is that S. 99 has been contravened. It is not necessary to prove any irregularity or substantial injury as would be requisite in a case under S. 311, Civil Procedure Code.' A deviation from the law which *per se* entitles the judgment-debtor to avoid the sale is something more than a mere irregularity, though it may not be a cause of nullity. A *voidable* transaction is, of course, different from one that is *void.* The transaction is good until it is avoided. The fact that under S. 316, Civil Procedure Code, the title vests in the purchaser from the date of the confirmation does not prove that it cannot thereafter be displaced.

1 (1908) I. L. R. 30 A. 146. 2. (1899) I. L. R. 22 M. at p. 349
3. (1882) I. L. R. 5 A. at 157 (P.C.). 4. (1866) I. L. R. 14 C. 18 (P.C.)
5. (1904) I. L. R. 32 C. at 316.

The decision in *Thaleri* v. *Thandora* [1] has the merit of being logical. If the judgment-debtor having notice of the sale does not object to it as being in contravention of S. 99, it was held, he ought not to be allowed to set it aside. The learned judges of the Calcutta High Court consider that that case went too far; and indeed it would be difficult to reconcile it with the view that the *sale is voidable*, for this necessarily implies that the sale has taken place, whereas the objection, if taken beforehand, should *prevent* the sale; and the right of avoidance cannot reasonably be confined to cases in which the judgment-debtor has no notice of the sale or the sale is held in spite of the objection taken by him.

The decision of the Allahabad High Court in *Madan Makund* v. *Jamna Kanlapuri* [2] no doubt accords with the view taken by the Calcutta Full Bench. In that case, the learned judges say: "No doubt the sale was held in violation of the provisions of S. 99, but it was the duty of the judgment-debtors to object to the sale or to the confirmation of the sale before the sale was confirmed. After the sale has been confirmed, as between the judgment-debtors and the auction purchasers, the title of the latter has become complete and it is no longer open to the * * * judgment-debtors to question the title of the defendants on the ground that the sale at which they purchased was not authorized by law." In support of this view, the learned judges refer to the principle of the decision in *Tarachand* v. *Imdad Husain*, [3] but that was quite a different case. There the objection to the sale had been taken and adjudicated on, though erroneously, by the Revenue courts which had exclusive jurisdiction in the matter and the Civil courts held that they could not go behind those orders.

The decision in *Kishen Lal* v. *Umrao Singh* [4] merely proceeds on the authority of the earlier cases and contains little of new or independent reasoning. The decisions of the Madras High Court in *Muthu* v. *Karuppan* [5] and *Dharanikota Venkayya* v. *Budharazu Surayya* [6] do not discuss the question of the time within which the sale should be set aside.

1. (1899) 10 M. L. J. Rep. 110.
2. 2 All. L. J Rep 128.
3. (1896) I L R. 18 A. 325.
4. (1908) I. L. R. 30 A. 146.
5. (1907) I. L. R. 30 M. 313.
6. (1907) I. L. R. 30 M. 362.

The view that after confirmation the sale cannot be sought to be set aside even on grounds that do not fall within S. 311, Civil Procedure Code--Art. 166 of the Limitation Act being therefore inapplicable—may be based on one of two grounds :—

(i) It has sometimes been held that with the confirmation, the executing court becomes *functus officio* and can, therefore, do nothing further (see for instance *Govind* v. *Umachurn*[1] and the dissenting judgment of *Ghose* J. in *Mohendra* v. *Gopal.*[2]) So far as it goes, this rests on an intelligible principle. ' The nature of the proceeding by motion renders it applicable with propriety only to a minority of the cases * * * for vacation. If a conveyance has been executed and the purchaser thereby vested with the legal title, it is doubtful whether he can be divested of it by motion. If the charge is that the sale ought to be vacated for matters not apparent from an inspection of the proceedings, such as combination * * * or other species of fraud * * * the better opinion is that the purchaser's title cannot be divested otherwise than by an independent suit in equity against him.' (*Freeman* on Executions, S. 310). With reference to S. 99 of the Transfer of Property Act itself many of the cases have held that a sale in contravention of it can be set aside only by a suit. But this is after all a mere matter of procedure. Whether by suit or by motion, it is evident that in spite of the confirmation certain questions can subsequently be raised with a view to vacate the sale. The preponderance of authority now in India is in favour of the view that all such questions should be brought up by proceedings before the executing court.

(ii) The more important ground is that the order of confirmation is ' conclusive ' between the parties like any other adjudication. But conclusive of what ? Only of the questions that are brought up or must be brought up at the hearing; ' conclusive that there have been no fatal informalities or irregularities or defects; we think of nothing more. The act has relation to mistakes or omissions of the officers of the law.' (*Freeman* 304 *l* Cf. *Ramchhaibar Misr* v. *Bechu Bhagat*[3]) Other questions may be presented at the hearing and if they are adjudicated upon, the determination may

1. (1887) I. L. R. 14 C. 679. 2. (1890) I. L. R. 17 C. 769.
3. (1885) I. L. R. 7 A. 641.

be conclusive; but there can be no *constructive* adjudication in respect of them, even when they are not presented. "Courts have sometimes vacated sales because the property sold was a homestead and therefore exempt from execution; but we apprehend that the question of exemption must ordinarily be presented and determined in some other proceeding." (*Freeman* on Executions S. 308). In another place (S. 311) the same learned author observes:—

"Whether the exemption of the property is a proper subject of consideration upon motion to confirm an execution sale is a question which has been but infrequently considered. If a sale may be refused confirmation on the ground that the property sold was exempt therefrom, the granting of an order of confirmation might involve an adjudication, actual or presumed, that the property sold was not exempt from such sale. We think the better opinion is, that the right of exemption, where claimed, should be left for determination in some subsequent action to recover the property sold, or to otherwise determine its title, and hence, that the confirmation of the sale of real property does not estop its owner from contending, in a subsequent action, that it constituted a homestead, and was, therefore, not subject to execution sale." There is nothing in S. 44 of the author's treatise on Void Judicial Sales, inconsistent with these observations.

Where property though generally subject to execution is exempt in the particular case (as under S. 99 of the Transfer of Property Act) 'the sale is not necessarily void, for the defendant may either waive or forfeit his right of exemption. In the absence of such waiver or forfeiture, the sale of exempt property is void' (Void Judicial Sales, S. 35). It is submitted that the principles above set forth, as to the time when the exemption should be claimed, apply equally to this class of cases; and a waiver cannot be implied from the mere omission to claim the exemption before confirmation. Whether there has been a waiver or not will depend on the circumstances of each case and a 'presumption of waiver cannot be rested on a presumption that the right alleged to have been waived was known—*Dhanukdhari Singh* v. *Nathuni Sahu* [1]. The rule that every one is presumed to know the law should not be carried too far.

1. (1907) 6. C. L. J. 62.

It is submitted that the outset limit of time is that fixed by Art. 178 of the Limitation Act (Cf. *Bhuban* v. *Rajah Peary*[1], *Golam Ahad.* v. *Judhishtir*[2] and *Debendranath* v. *Prasanna Kumar*[3]) but even within that period the judgment-debtor may, for several reasons, be debarred of his right to have the sale set aside. 'He is bound to act with reasonable diligence and in good faith' and if by *unreasonable inaction*, he causes the purchaser to change his position to his prejudice, an estoppel may arise in favour of the latter. And conduct on the part of the judgment-debtor clearly amounting to a waiver may put an end to his right to question the sale. The right will also be subject to the general rule applicable to all *voidable* transactions, that the right to avoid should be exercised before innocent third parties acquire any interest in the property which may be injuriously affected by the avoidance.

NOTES OF INDIAN CASES.

Chatring Moolchand *v.* **R. H. Whitchurch.**—I. L. R. 32 B. 208.—In spite of express statutory provisions and a long course of decisions on the subject it is far from easy to say what exactly is the law in India as to relief against unconscionable bargains. As pointed out by the Judicial Committee in *Dhanipal Das* v. *Maneshar Bhaksh Singh* [4] it is hardly correct to say that in England a Court of Equity could give relief in all cases of hard or unconscionable bargains. This jurisdiction of equity has "in modern times, at any rate, been confined to dealings with expectant heirs, including the whole class of persons for convenience's sake comprehended under that designation"—per *Lord Macnaghten* in *Samuel* v. *Newbold*[5]. So far as transactions with money-lenders are concerned, the statute of 1900 has created a 'new jurisdiction.' The relief given under its provisions 'is not that theretofore administered by Courts of Equity, but differs from it in character, nature and extent * * * *. The statute did more than extend and widen the character and nature of the relief which might hitherto have been granted or increase the number of possible plaintiffs for equitable relief. It also extended the grounds on which this enlarged relief might be given,' (per

1. (1899) I. L. R. 26 C. 326.
2. (1903) I. L. R. 30 C. 142.
3. (1907) 5 C. L. J. 328.
4. (1906) I. L. R. 28 A. 570.
5. (1906) A. C. at p 468.

Lord Atkinson, *Ibid* pp. 476, 477). We have nothing in India corresponding to the Money-Lenders Act and the grounds of relief are not therefore quite so wide. Under the English Act 'excessive interest of itself is sufficient to render a contract harsh and unconscionable' and proof of it 'may of itself therefore be sufficient to entitle the debtor to relief' (per *Lord James*, *Ibid* p. 473). This is certainly not the law in India (Cf. *Sundar Koer* v. *Sham Krishen* [1]) and in the case under notice the learned Judge rightly says that there must be evidence of undue influence as required by S. 16 (of the Contract Act) and that a high rate of interest * * is not by itself sufficient evidence of undue influence." But having regard to the pronouncements of the Judicial Committee and of the House of Lords we are, however, inclined to think that the law in India, as instanced by illustration (*c*) to S. 16 of the Contract Act goes somewhat further than the recent practice of the Court of Equity in England, in respect of the grounds of relief. But it is noteworthy that the ***kind*** of relief given under S. 19-A is that administered by the Court of Equity and not that provided for by the Money-Lenders Act. The court does not 'mend the bargain;' but 'on the plaintiff submitting to do equity by repaying what was justly due, the court sets aside the transaction' (per *Lord Macnaghten*). In spite of the fact that many Indian cases on the point, including those decided by the Judicial Committee, have proceeded upon the analogy of the English equity cases, we do not think the English authorities can safely be depended upon, at any rate after the amending Act of 1899. Thus, for instance, the observation of *Sir William Grant—i.e.*, that 'it is not every bargain which distress may induce one man to offer that another is at liberty to accept' (*Bowes* v. *Heaps*[2])—seems hardly consistent with the principle acted on by the Privy Council in *Sundar Koer* v. *Sham Krishen*.[1] And in *Dhanipal Das.* v. *Maneshar Bhaksh Singh*[3], the Judicial Committee expressly said that "the Subordinate Judge was wrong in deciding the case in accordance with what he supposed to be English equitable doctrine. *He ought to have considered the terms of the amended S. 16 only*" (the italics are ours).

1. (1906) 34 C. 150 P. C 2. (1814) 3 V. and B, at p. 119.
3. (1906) I. L. R. 28 A. 570.

Pramada Nath Roy *v.* **Ramani Kanta Roy.**—I. L. R. 35 C. 331: P.C.—The practice of impleading, as defendants, persons who are jointly entitled with the plaintiff to bring the suit has been criticised by an eminent authority as an irregular and illogical procedure, and it was suggested for the consideration of the legislature that, with certain safeguards as to notice, costs, etc., the 'willing plaintiffs' should be enabled to sue on behalf of themselves and the others entitled jointly with them. The legislature has not chosen to adopt the suggestion; and the present decision of the highest tribunal recognizes and sanctions the existing practice. 'It is a general rule' say their Lordships of the Judicial Committee, 'that a sharer whose co-sharers refuse to join him as plaintiffs can bring them into the suit as defendants and sue for the whole rent' and the rule is said to be derived from 'the general principles of legal procedure' (see also *Rajendro Nath Dutt* v. *Shaik Mahomed* [1]).

Refusal to join as plaintiff is not the only ground that would justify such a course. As the Court of Appeal in *Luke* v. *South Kensington Hotel Co.* [2] said, 'there must be some substantial ground for it,' as when one of several co-trustees has been implicated in the loss of trust estate sought to be recovered or has in any other way prejudiced his right of action or made it an embarassment for him to be made a co-plaintiff (Cf. *Mariyil Raman Nair* v *Narayanan* [3]). But 'you have no right capriciously to make persons defendants when they ought to be plaintiffs and thus increase the costs of the other defendants.' (per *Jessel* M. R.)

The tendency of recent decisions in India has been in favour of allowing even greater latitude; (see *Pyari Mohun* v. *Kedar Nath* [4]; *Biri Singh* v. *Nawal Singh* [5]; *Karattole Edamana* v. *Unni Kannan* [6]; *Peria Karuppan* v. *Velayutham* [7] Cf. also *Kokilasari Dasi* v. *Mohunt Rudranand* [8]) and we think that the decision under notice in no wise affects them. The affirmation of the right of some of several joint owners or promisees to sue, making the rest defendants *when they refuse to join as plaintiffs*, does not involve the negation of the right in other cases. It may be pointed out that the decision of the Calcutta Full Bench in *Pyari*

1. (1881) I. L. R. 8. C. 42 P. C.
2. (1879) L. R. 11 Ch. D. 121.
3. (1902) I. L. R. 26 M. 461.
4. (1899) I. L. R. 26 C. 409
5. (1898) I. L. R. 24 A. 226.
6. (1903) I. L. R. 26 M. 649.
7. (1906) I. L. R. 29 M. 302
8. (1906) 5 C. L. J. 527.

Mohan Bose v. *Kedar Nath Roy* [1] has been referred to in the judgments under appeal and their Lordships express no disapproval of it. Of course it was not necessary for them to do so, but this at least shows that no negative inference can be drawn from the decision.

Jogendra Nath Sarkar *v.* **Gobinda Chandra Dutt.**—I. L. R. 35 C. 364.—In this case the learned Judges follow the view of their own court while in *Budrudeen Sahib* v. *Abdul Rahim Sahib* [2] *Boddam* J. *and Munro* JJ. have taken a different view, relying on the decisions of the Bombay and Madras High Courts. We feel bound to say that there must be some limit to the theory of 'liberal construction' of S. 244, C. P. C., especially when it involves the dismissal of a petition and very often the consequent denial of justice, seeing how reluctant courts are to exercise—even when that is possible—the discretion supposed to vest in them of treating a suit as a petition under S. 244 and *vice versa.* The same individual may fill more than one *legal capacity*; it is not without a foundation of principle to hold that in S. 244, as under S. 13, the identity of parties is a *legal* identity or representation and not merely *physical* identity or representation.

Singamsetti Sanjivi Kondaya *v.* **Draupadi Bayamma** *alias* **Venkamma.**—I. L. R. 31 M. 153.—**Bhagwant Dayal Singh** *v.* **Debi Dayal Sahu.**—I. L. R. 35 C. 420 (P. C.)—The question whether a suit to set aside a sale made by a widow with limited interest under circumstances which according to the ultimate finding of the Court render the purchase-money binding will be liable to be dismissed if the plaint does not contain an offer to refund the purchase-money apparently raised in the Madras case deserves more careful examination. If the reversioner's case is that the sale is not binding upon him or the reversion as being an excess of the limited powers of the widow and the Court holds that the sale is in excess of such powers and in consequence not binding upon the plaintiff it is only an equity that is given to the defendant —the purchaser—that he should be reimbursed the purchase-money utilized for the purposes binding on the reversion. One can hardly perceive how when a plaintiff seeks to impeach a sale he is disentitled to relief merely because he did not offer to do the

1. (1906) 5 C. L. J. 527.
2. (1908) 1. L. R. 31 M. 125.

equity which the Court may find as between the parties. Such an equity will be given to the defendant if he is entitled to it, and we cannot suppose that under any system of pleading, however highly technical it may be, there can be any such rule of pleading as that laid down in this case. After all we suppose the remark is only by way of *obiter*. The case referred to by the learned judges at p. 155, and from which they quote, is that reported *Konwar Doorganath Roy* v. *Ramchunder Sen*.[1] There is apparently some misconception by the learned judges of the nature of the suit in the Privy Council case. The suit was, no doubt, a suit to set side an alienation. The suit was one to recover possession of certain property alleged to be debutter by setting aside certain alienations made by an alleged shebait who is no doubt a widow. The defence of the purchasers was that the property was not debutter, and even if it were debutter the alienations were made for purposes binding upon the idol. In the argument before the Privy Council the plaintiff relied upon estoppel. He claimed that as the sale deed to the purchasers (respondents) recited the property to be debutter the purchasers were estopped from saying that they were not so. To this the natural answer was that if it were so the plaintiff was equally estopped by the other recitals as the admission should be taken as a whole if it were to operate as an estoppel, and as the sale was stated to be for the necessary purposes of the idol and that there was no evidence that the purchasers did not put entire faith in them that the sales could not be impeached. It is to this last answer there was an objection raised as a sort of replication and the remarks of the Judicial Committee quoted in the present case under notice were addressed in meeting this replication. The plaintiff's replication was that in the written statement the purchasers claimed that the money was wanted for two purposes, while, according to the sale deed, it was wanted for only one purpose. It was with reference to this that those observations were made, and, whatever may be the true effect of these observations, the decision of the Judicial Committee in *Bhagwat Dayal Singh* v. *Debi Dayal Sahu*[2] must be taken practically to overrule the view taken in *Mutteeram* v. *Gopaul Sahoo*[3] and *Muddun Gopal* v. *Rambuksh*.[4] In this case,

1. (1876) 2 I. A. 52, 65.
2. (1908) I. L. R. 35 C. 420 (P. C.)
3. (1873) 11 B. L. R. 416.
4. (1866) 6 W. R. 74.

the plaintiffs, as pointed out by the High Court (I. L. R. 31 C. at p. 447) 'deliberately chose to rest their cases upon allegations of wasteful, extravagant and unnecessary borrowing' and they failed to substantiate these allegations. They never offered to repay any portion of the purchase money; but the Judicial Committee, nevertheless, gave them a decree for possession upon payment of the sum found to be justly due to the alienee.

The other point in the Calcutta case relates to the alienee's right to interest. His right was affirmed in *Phool Chund Lall* v. *Rughoobuns Sahai*[1] but the question was left open in the Madras case above referred to. Their Lordships of the Privy Council say that 'as the deeds of sale are not good as such,' the plaintiff is entitled to mesne profits and the alienee to interest—of course from the date of the widow's death. (See *Mutteeram* v. *Gopaul Sahoo*[2]).

SUMMARY OF ENGLISH CASES.

Speyer Brothers *v.* Commissioners of Inland Revenue.
[1908] A. C. 92 (Eng).

Stamp Act—Document both promissory note and marketable security—How chargeable.

Where a document is by its description chargeable under the Stamp Act as a promissory note and is also chargeable under the Act as a marketable security, the Crown has a choice whether to charge it under the one or the other description, and it may charge the higher rate, though it can charge only once.

Cohen *v.* Bailey Worthington.—[1908] A. C. 97 (Eng.)

Protectors of settlement—Survivorship—Power of appointment notwithstanding.

It is clear law that when two persons are appointed protectors of a settlement under the Fines and Recoveries Act, with nothing more, the consent of the survivor enables the tenant in tail to bar the entail. The operation of this rule is not excluded by the mere fact that power is given to fill up the number of the group constituting the protectors and a desire is expressed that the full number should from time to time fill the office.

1. (1865) 9 W. R. 108. 2 (1873) 11 B. L. R. 416.

Sir John Jackson, Ltd. *v.* Owners of the Steamship "Blanche." [1908] A. C. 126 (Eng.)

Charterer—Owner within S. 503, *Merchant Shipping Act* (57 & 58 *Vic. Cap.* 60).

A charterer to whom a ship is demised is the "owner" of the ship within the meaning of S. 503 of the Merchant Shipping Act and is entitled to the limitation of liability therein prescribed. The policy of the section is to prevent ruinous damages from being inflicted upon an innocent principal as a consequence of an error of judgment in a difficult and dangerous business by his agents in charge of a vessel. Such being the mischief against which S. 503 was intended to provide, it is not met by construing the word "owners" in the narrow sense of "registered owners." Therefore, the broader interpretation which the word undoubtedly bears in many other parts of the Act is to be applied here too.

North and South Wales Bank *v.* Irvine

and

North and South Wales Bank *v.* Macbeth.

[1908] A. C. 137 (Eng.)

Bills of Exchange Act, S. 7, *Sub-S.* 3—*Fictitious person—Meaning of—Set off inadmissible.*

Held:—Where a real person draws a cheque designating an existing person as the payee, intending also that that person should be the payee, the payee is not a fictitious person within the meaning of S. 7, Sub-S. 3 of the Bills of Exchange Act.

It was also held that the appellants were not entitled to deduct the amount paid by White to the plaintiff to enable him to meet the cheque. There was nothing that could entitle the defendants to stand in the shoes of White's trustees and claim against the plaintiff what, in effect, is a set-off arising out of an indebtedness, not to themselves, but to White.

[(1908) I. K. B. 13 affirmed. For facts see 18 M. L. J. 61.]

Weir *v.* Crum-Brown. [1908] A. C. 162 (Sc.)

Gift for the relief of indigent bachelors and widowers—Practical sympathy in pursuits of science—No uncertainty.

A gift for the relief of indigent bachelors and widowers who have shown practical sympathy in the pursuit of science is not void

for uncertainty. All that is required is that the description of the class to be benefitted shall be sufficiently certain to enable men of common sense to carry out the expressed wishes of the testator. The word " science " embraces a wide but perfectly ascertainable range of subjects.

Cameron *v.* **Young.** [1908] A. C. 176 (Sc.)

Lease—Wife and children of tenant—Negligence of landlord —Not entitled to damages against landlord for illness—No cause of action.

The wife and children of a tenant of a dwelling house are not entitled to recover damages from the landlord for loss and injury through illness caused by the insanitary state of the premises. Their case differs entirely from that of a neighbour. He stands on his own right. The owner is liable in his case because of the principle " sic utere tuo ut alienum non laedas." Those within the house like the wife and children have no right to be there except by the license of the owner, given by the owner to the person with whom he chooses to contract. They are not parties to the contract with the landlord ; he owes no duty to them and, therefore, they are not entitled to any damages as against him. Their claim, if any, is against the tenant. Otherwise, the liabilities of the landlord may be indefinitely increased or diminished according to the domestic or social relations or tastes of the tenant over which the landlord has no control.

Douglas-Menzies *v.* **Umphelby.** [1908] A. C. 224 (P.C.)

Right of election—Estates in Scotland and Australia—Two instruments forming one will—Election to take against one—Cannot take under the other.

A testator left two testamentary instruments, one dealing with his property in Scotland, the other with his property in Australia. Between the two wills, his property was completely disposed of. His direction was that the former was to be interpreted according to Scotch Law and the latter according to the Law of New South Wales. There were large bequests made to the widow in both the wills. But so far as the Scotch will was concerned the widow elected to take against the will relying upon

her right as a Scotch widow. The question was whether this estopped her from taking under the Australian will.

Held she was, by her election in respect of the Scotch will. Whether a man leaves one testamentary writing or several testamentary writings, it is the aggregate or the net result that constitutes the will, or, in other words, the expression of his testamentary wishes. And when the law of approbate and reprobate (which is the same thing as the doctrine of Election in England) is applied, it is this, the net result of the testamentary writings which the doctrine protects from invasion.

The King *v* **Daye.** [1908] 2. K. B. 333.

Subpœna duces tecum—Sealed packet containing medical prescription—Whether packet is a document—Liability to produce.

A sealed packet containing a medical prescription may be a 'document' and as such liable to production upon a *subpœna duces tecum* upon pain of attachment, even if it had been deposited with the witness on terms that it shall not be delivered up except with the consent of the depositors.

Per *Darling* J.—"I should myself say that any written thing capable of being evidence is properly described as a document, and that it is immaterial on what the writing may be inscribed."

Baker *v.* **Snell.** [1908] 2. K. B. 352.

Savage dog—Knowledge of owner—Absolute liability for biting.

Per *Channel* J.—An owner of a dog known to him to be savage is liable if it bites another even it be through the neglect of the keeper.

Per *Sutton* J.—The owner keeps the savage dog, known to him to be so, at his peril and is liable for its bite even if it be through the wilful act of a third person "except where the plaintiff by his own conduct has brought the injury upon himself."

[*May* v. *Burdett*[1] followed.]

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1. (1846) 9 Q. B. 101.

Joel *v.* Law Union and Crown Insurance Co.
[1908] 2. K. B. 431.

Life Insurance—Innocent non-disclosure of material facts—Voidability of contract—Absence of fraud—Liability to refund premia.

Even an innocent non-disclosure of a material fact, the knowledge of which is likely to affect the business, avoids a life-insurance contract and where the insured is not guilty of fraud with regard to statement of facts forming the basis of the contract, the premia paid ought to be refunded before the policy is avoided.

[*Brownlie* v. *Camplick*[1] followed; *Hambrough* v. *Mutual Life Insurance Coy. of New York*[2] doubted.]

The King *v.* Dyson. [1908] 2. K. B. 454. (Cr. Ap.)

Misdirection to the Jury—Material question of fact—Miscarriage of justice—Criminal Appeal Act (1907) *S.* 4. *Sub*-S. 1, 7 [*Edw.* 7, *C.* 23]—*Effect of.*

In a case where the accused was charged with manslaughter of a child by inflicting certain injuries it appeared that the injuries were caused on two occasions; (1) more than a year and a day before the death, and (2) a month before the death. The Judge having directed the Jury that they might find the accused guilty if they considered the death to have been caused by the injuries inflicted actually a year and a day before the death, the Court of Criminal Appeal held that it was a misdirection as the law is "that no man can be convicted of manslaughter where the death does not occur within a year and a day after the injury was inflicted" and that the proper direction to the Jury was "whether the prisoner accelerated the child's death by injuries" inflicted a month before its death, as there was clear evidence that the child would even without the recent injuries have died of meningitis.

Held also that the provision in the Criminal Appeal Act in S. 4, Sub-S. 1, that an appeal might be dismissed if there was no miscarriage of justice cannot apply to the case; for a finding on a question of fact, *viz.*, whether the accused accelerated the death was necessary, which the Jury alone could return and the Judges

1. (1880) 5 A. C. 925, 954. 2. (1895) 72 L. T. 140

cannot substitute themselves for the Jury, for "the proviso is intended to apply to a case in which the evidence is such that the Jury must have found the prisoner guilty if they had been properly directed" and "it does not apply where the evidence leaves it in doubt whether they would have so found."

Bisgood *v.* Henderson's Transvaal Estate Limited.

[1908] 1 Ch. 743 (C. A.)

Memorandum of Association—Scope of—Corporate object—Distribution of assets not a corporate object.—S. 161, *Companies Act* 1862 (25 & 26 *Vic. & C.* 89).

The defendant company resolved at an extraordinary general meeting that its business should be handed over to a new company, each share-holder to get an equal number of shares in the new company, each fully paid up £1 share of the old company, however, counting only for 17*s.* 6*d.* paid up on each £1 share of the new company. It was further provided that such of the members as do not accept the arrangement should have the proceeds of the sale of the shares allotted to them distributed amongst them proportionately to the shares held by them in the old company. There was a specific clause in the memorandum of association of the company that the sale and distribution of its assets could be made without reference to the provisions of S. 161 of the Companies Act. *Held*, notwithstanding, that the scheme was ***ultra vires.*** The reasoning of their Lordships may be stated as follows:—" It is no part of the function of the Memorandum of Association to define under the corporate objects the distribution of the assets after the corporate life is over. As soon as the company passes into liquidation, the distribution of its assets is a matter which concerns the corporation not at all but its creditors and contributories only. The purpose of the memorandum and articles, however, is not confined to defining and limiting the purposes of the corporation. It extends also within proper limits to defining and ascertaining the rights of corporators. Within proper limits the memorandum may provide how as between the corporators, the corporate assets shall be dealt with after liquidation. But there are limits imposed by statutes. As observed by Lord *Macnaghten* in *Welton* v. *Saffery*[1] " these companies are the creatures of Statute and by the Statute to which they owe

1. (1897) A. C. 299.

their being, they must be bound in regard to shareholders, as well as in regard to creditors in all matters coming within the conditions of the Memorandum of Association. Shareholders in these companies require protection just as much as creditors, perhaps even more. Thus, the articles cannot exclude a shareholder from his right of dissent under S. 161 of the Companies Act, 1862. Consistently with the statutes, the constitution of the corporation cannot be such that every corporator shall, in the matter of the distribution of assets, be bound by the vote of the majority."

Thomson *v.* Henderson Transvaal Estates, Ltd. [1908] 1 Ch. 765.

Resolution for winding up, coupled with an invalid reconstruction scheme—Not bad on that account.

Winding up is a corporate act and can be provided for in the Articles of Association. A resolution for voluntary winding up is not bad merely by reason of its being passed contemporaneously and in concert with a resolution for a reconstruction scheme held to be invalid.

Pearce *v.* Bullard King & Co. [1908] 1 Ch. 780.

Bankruptcy—Secured creditors—Proof for the balance—Composition—Redemption on payment of aggregate assessed value with interest.

The defendants were secured creditors of the plaintiff who was adjudicated a bankrupt. The defendants sent in their proof as secured creditors lumping together their debts and securities and claiming to prove for the balance. Subsequently there was a scheme for composition and on payment of the same, bankruptcy was cancelled and an order was made which revested the property in the bankrupt. *Held*: plaintiff was entitled to redeem all the securities upon payment of the aggregate assessed value of the securities with interest thereupon from the date of the proof. It was not open, however, to the plaintiff to pick and choose between the securities and redeem only such as he chose.

In re **Wrightson *v.* Cook.** [1908] 1 Ch. 789.

Administration Act—Breach of trust—Wilful default—Difference between—Removal of Trustees—Principles.

In an administration action, it is unnecessary to ask expressly for the removal of the trustees. If the facts alleged in the pleadings or the facts ascertained in working out the judgment pronounced at the trial or the inquiries properly added to it according to the practice of the Court shew that the removal of the trustees is necessary for the welfare of the trust, the court may remove the trustee; similarly also if the trustees subsequently to the judgment were to be guilty of some misconduct or if some circumstances should arise subsequently to judgment which made it necessary to remove the trustees. However, after once taking a common administration decree it is not open to a party to charge the trustees with breaches of trust before the issue of the writ or before judgment, whether it be for the purpose of removing the trustees or for taking accounts on the footing of a breach of trust. In regard to breach of trust, that is to say, active breach of trust, the plaintiff is not entitled to a relief at the trial except in regard to that which is alleged in the pleadings or proved at the trial. In this, it differs from the case of wilful default. If a single default is proved, accounts are directed to be taken on that footing. The difference is due to the fact that there is no special form of accounting in cases of breaches of trust.

In exercising so delicate a function as that of removing a trustee, the main guide must be the welfare of the beneficiaries, looking to all the circumstances of the case. Neither the disagreement between the *cestui que trust* and the trustees nor the disinclination on the part of the *cestui que trust* to have the trust property remain in the hands of a particular individual is a sufficient ground for their removal. In this case, though admittedly there was a breach of trust, having regard to the fact that thereafter the trustees were subject to the court's supervision, having regard also to the fact that a large proportion of the beneficiaries did not desire the trustees to be removed, and further having regard to the extra expense and loss to the trust estate which must be occasioned by the change of the trustees, the court refused to remove the trustees.

In re **Bruce—Lawford** *v.* **Bruce.** [1908] 1 Ch. 850.

Residuary legatee—Residuary legatee of testator's debtor also—Liable to account for debt with interest though barred.

A person entitled to a share in the residuary estate of a testator was also the sole residuary legatee of a debtor to the testator's estate. *Held*:—the amount of the debt with interest ought to be taken account of against his share of the estate though the debt might be one barred under the Statute of Limitations.

In re **Gedney—Smith** *v.* **Grummit**. [1908] 1 Ch. 804.

Administration—Balance of sale proceeds with mortgagee—No set off.

In an administration action by a creditor against the estate of a deceased person, it is not open to a mortgagee who has in his hands some balance of the proceeds of the sale of the mortgaged property after deducting the mortgage money, to plead a set off in respect of personal debts due from the deceased to the defendant. Neither under the Judicature Act nor under S. 38 of the Bankruptcy Act is the defendant entitled to any set off. The debt sought to be set off was one due from the testator; on the other hand, the balance proceeds were due to the devisee. There was no liability to pay the debts apart from the Administration of Estates Act, 1833. The estate, no doubt, was an asset to be administered in Equity, but this did not constitute the two debts "mutual debts or credits" within the meaning of S. 38 of the Bankruptcy Act.

Deschamps *v.* **Miller.** [1908] 1 Ch. 856.

Suit for declaration—Title to immoveable property outside jurisdiction involved—Suit not entertainable in the absence of special circumstances.

This was an action for a declaration that the plaintiff as administrator of his mother in England was entitled under the marriage contract of his parents to half the after-acquired properties of his father. The properties were situate in India and the contract was a French contract, but the parties were all resident in England. Some time after the marriage, the plaintiff's father went to India and there went through the form of a marriage with another lady settling all his after-acquired properties. Defendants were trustees under that settlement. *Held*: that the action was not entertainable on two grounds: *first*, because the Court would not adjudicate on questions relating to title or the right to the possession of immoveable property out of the jurisdiction of the Court

in the absence of circumstances such as some personal obligation arising out of a contract or implied contract, fiduciary relationship, or fraud, or some other conduct which in the view of a Court of Equity is unconscionable and not dependent upon the law of the *locus* of the immoveable property; *secondly* because there was an administrator of the estate of the mother in India, and he was not a party to the action.

Crosbie Hill *v.* **Sayer.** [1908] 1 Ch. 866.

Right to call for conveyance—Subrogation, principles of—Equities—Priority.

There was first a legal mortgage in favour of a Building Society. The mortgagor arranged with a bank to pay off the Society, giving the bank an equitable charge on the property comprised in the mortgage, undertaking at the same time to execute a legal mortgage if and when required. The Society was paid off by the mortgagor with money supplied by the bank, and the Society handed over to the bank all the deeds including the mortgage deed with a receipt in the statutory form. Some time after, the mortgagor showing what he said was the title-deed of the lands (but which was, as a matter of fact, a forgery) executed what purported to be a legal mortgage in favour of the defendants. Next year the mortgagor arranged with the plaintiffs to pay off the bank and executed a legal mortgage to them, but the bank was not a party to it. In an action by the plaintiffs: *Held*—that the legal estate was still in the bank, and that as between the plaintiffs and the defendants who were in law both equitable mortgagees, the plaintiffs had the better equity. On the question as to the right to call for conveyance (the statutory receipt vested the right to the estate in the person having the best right thereto) the Court observed—"A third party who at the request of the mortgagor pays off a mortgage has *prima facie* a better right than the mortgagor to call for a conveyance, and the mere fact that as a part of the same transaction, the mortgagor executes in favour of the third party a memorandum of equitable charge containing an agreement to give a legal mortgage when called upon to do so, does not abrogate this *prima facie* right." On the other question as to the equities between the plaintiffs and defendants, the following were the observations of the Court: "Where a third party

at the request of the mortgagor pays off a first mortgage with a view to becoming himself a first mortgagee of the property he becomes, in default of evidence of intention to the contrary, entitled in equity to stand in the shoes of the first mortgagee. Even in the case of a purchase of the equity of redemption where the first mortgagee is at the same time paid off and joins in a conveyance of the property so that questions of merger arise, it will require strong evidence of contrary intention to preclude the Court from holding that the first mortgage debt is still alive for the purpose of protecting the purchaser of the equity of redemption from mesne encumbrances whether at the time of the purchase he knows of such incumbrances or otherwise. The question in such cases is not whether the purchaser has shown an intention to keep the security of the first mortgage alive for his own protection but whether the Court can gather that the has shown an intention to merge it for all purposes." Apart from this "the possession of title deeds with the plaintiffs is alone sufficient to give them priority over the defendants who have no title deeds with them."

In re **Abrahams—Abrahams** *v.* **Abrahams.**

[1908] 2 Ch. 69.

Residuary legatee—Debt payable in instalments due to the estate from him—Share, if could be retained.

The question in the case was whether the executors of a will were justified in retaining the share of a residuary legatee against the future instalments of a debt owing from him to the estate.

Held following *In re Rees*[1] not.

In re **Jameson—King** *v.* **Winn.** [1908] 2 Ch. 111.

Imperfect description of legacy—Evidence to show what was the subject-matter intended—Admissibility of.

A testatrix bequeathed to two legatees equally "all her shares in Wensleydale and Swaledale Banking Company." No bank of that name, however, existed. As a matter of fact, she owned at the date of the will some shares in Swaledale and Wensleydale Banking Company which was subsequently amalgamated with another company, Barclay & Co. of which she received

1. 60 L. T. 260.

as many shares in exchange. These shares the testatrix still held at the date of her death and held no other banking shares.

Held that the shares in Barclay & Co. passed to the legatees.

Held also that evidence of the facts above set forth was admissible to prove what exactly was the subject-matter of the gift.

Dansk Reky Criffel Syndikas Aktieselkskal *v.* **Snell.**

[1908] 2 Ch. 127.

Patents—Sale for £5,000 and royalties—Vendor's lien in respect of unpaid royalties.

Plaintiffs sold some patents to Snell for £5,000 and certain royalties, the latter guaranteeing certain minimum royalties during the continuance of the patents, the whole to become payable in case of default in respect of any minimum. Subsequently Snell sold the patents to a company who had knowledge of the plaintiffs' agreement and paid also the minimum royalty due for one year. But soon after Snell repudiated the agreement ; plaintiffs accordingly brought an action for the royalties—against Snell as damages—against the company, as purchase-money for which they claimed a vendor's lien.

Held, though upon the construction of the pleadings the plaintiffs had not irrevocably elected to rescind the agreement they could not sue both in damages for the breach and also for the consideration.

Held also, the plaintiffs had a vendor's lien on the patent for unpaid minimum royalties. "The obligation to fulfil the terms of the agreement being with regard to the assignees not personal but attached to the property which they acquired with notice of the terms upon which it was held by their assignor disabled them from holding the property without fulfilling the terms. Upon the construction of the agreement, it was clearly intended that the vendor should retain a charge on the property and not that he should part with the property completely, looking solely to the personal liability of the purchaser to pay the consideration."

***In re* Carshalton Park Estate Ltd.—Graham *v.* The Company; Turnell *v.* The Company.**

[1908] 2 Ch.

Floating debenture—Action before due date of payment and when no jeopary to charge—If money payable at the hearing—Decree may be given notwithstanding.

Where there is a floating security on the assets of a company the holder of it has has a right to issue his writ for the protection of his interest before the money has become payable, and if, when the action comes on, the evidence shows that the money has become due or that something has happened which has crystallised the security, there is jurisdiction to make the usual order for realisation of the security, and so far as is necessary for foreclosure, though on the facts as existing at the date of the writ the plaintiffs would not have been entitled to a decree, the money being not payable and the security not being in jeopardy. Accordingly the court appointed a receiver at the hearing on the ground that the money had become payable though it had refused the application on a previous occasion.

Barraclough and another *v.* Cooper. (*House of Lords.*)

[1908] 2 Ch. 121.

***In re* Lambert—Corus *v.* Harrison.** [1908] 2 Ch. 107.

***In re* Cope—Cross *v.* Cross.** [1908] 2 Ch. 1.

Construction of will—Principles of—"Shall die" read as "shall have died"—Gift original or substitutional.

All these cases relate to construction of wills. The words used were more or less similar. But yet in the first two cases the gift was considered to be original; in the last substitutional. These cases forcibly illustrate the truth of the observations of *Halsbury* L.C. in the first case: "It seems to me that the last thing one ought to do should be to attempt to make a canon of construction which could guide the court in interpreting all wills. That is certain to lead to error. There are some technical phrases, and there are some phrases which have become almost technical, having received a construction with regard to wills which we cannot get rid of; but I cannot help thinking that half the disputes arise from a consideration of what the canons of construction mean unaffected by the circumstances of each particular case. If you lay down a canon of construction

which is supposed to meet every case, you are absolutely certain to go wrong."

In the first case, the gift was—an annuity to the wife, surplus of the rents to the testator's children in equal shares, and if any of the children shall have died in his life time or in the life time of his wife leaving issue, such issue to take the shares of the parents if living; after the death of the wife upon trust for his 4 children; in trust in respect to a portion for the life of a granddaughter of his; after her death to fall into residue; the rest of the estates to his children in equal shares; provided that, if any child of his shall die in his lifetime and any issue of that child shall be living at his decease, the shares to which the child so dying would, if living at his decease, have been entitled should go to such child.

In the second case, the words were "to all of his nephews and nieces who shall be living at his death provided always that if any nephew or niece shall die in my life-time leaving a child or children who shall survive me. . . .then such children shall take the share which their parents would have taken."

In the last case, the gift was to "all his children who attained the age of 21 in equal shares provided that if any child shall die in his life-time leaving a child or children who shall survive me such child should take the share which their parents might have taken." In the first two cases "shall die" was read as equivalent to "shall have died" and the issue of children who were deceased at the date of the will were held to come in under the gift. In the last case, it was held that the gift was substitutional and only in favour of the issue of children alive at the date of the will.

Lord Fitzhardinge *v.* **Purcell.** [1908] 2 Ch. 139.

Common law right in the foreshore and bed of tridal and navigable rivers—Customary right—Right to take wild fowl, a profit and not an easement.

The action was for an injunction to restrain the defendant from trespassing on the lands belonging to the plaintiff, *viz.*, the lands between the high water-mark of ordinary tides and the middle of the deepest channel of the river Severn, for the purpose of killing wild fowl. Being an action in trespass, plaintiff had to show possession in fact, or possession at law relying upon

her title at law, in which latter case the defendant might show that the title was not in the plaintiff but in some third party which he could not do in the former case unless he had a license from such third party. No doubt the Severn being a tidal navigable river, all these lands were *prima facie* the property of the Crown and the plaintiff's title, if he had one, was to be derived by a grant from the Crown. But on the facts it was clear that the foreshore and the bed of the river vested in the plaintiff by a grant from the Crown. But the defendant sought to justify his action, first, on the ground that as a member of the public he had the common law right to enter upon the foreshore and bed of the river for the purpose of killing wild fowl and converting them to his own use, and secondly, by virtue of a local immemorial custom in common with the other inhabitants of the neighbourhood. As to custom, having regard to the fact that the enjoyment was recent, and that neither the defendant nor his father, in exercising the rights, limited the rights either in respect of the place or persons as contended for at the trial, the user proved being also more extensive than the custom set up, his Lordship found against it. His Lordship was also doubtful, the right claimed being a profit and not an easement, whether such a custom was good in law. As regards the first ground of right, his Lordship held there was no such common law right. "So far as the foreshore is concerned, at any rate when it is uncovered by the tide any right the public have are ancillary to the public rights of fishing and navigation in the sea itself. Even on the bed of the river and the foreshore when covered by water, looking upon it as a part of the sea, still the public right is confined to fishing and navigation; subject to that right, the Crown's ownership of the foreshore is a beneficial ownership. The bed of the sea, at any rate for some distance below the low water mark, and the beds of tidal navigable rivers, are *prima facie* vested in the Crown, and there seems no good reason why the ownership thereof by the Crown should not also be, subject to the rights of the public, a beneficial ownership; consequently the Crown may grant them to the subject though no grant by the Crown could operate so as to extinguish or curtail the public rights of navigation and rights ancillary thereto, except possibly in connection with such right as anchorage when there is some consideration moving from the grantee to the public. This right of navigation

is analogous to a right of way of passage and can only be used for those purposes for which it exists ; as such, shooting wild fowl when on the land, was a trespass." Further it was not clear that the common-law does not recognise proprietary right in wild birds. On all these grounds, injunction was granted to the plaintiff as against the defendant.

JOTTINGS AND CUTTINGS.

DOES THE CITY OR THE SMALL TOWN OFFER THE BEST INDUCEMENTS TO THE YOUNG LAWYER STARTING IN THE PRACTICE OF LAW?

From David J. Brewer, Justice of the United States Supreme Court.—The bulk of the law business is centered in our large cities, and one who is so situated that he can wait for business may expect a more luciative practice in a city than in a small town. But many young lawyers are so situated that they cannot afford to wait. Their means have been exhausted in acquiring their education, and they must do something promptly towards earning a livelihood. Such a one will find his way into practice more quickly and easily in a small town than in a large city. Of course, there are exceptions to such general statements. One may have relatives or friends in the city who will speedily introduce him to a good clientage. But not all are so favoured. The majority have to make their own way and rely upon themselves. Independently of pecuniary considerations the position of a country lawyer is to be coveted. He may not look for the large income of his city brother, but he will become the trusted adviser and counsellor of a community, the leading citizen of the village. His life may be less eventful, less conspicuous, but it is apt to be more even in its flow, more peaceful and satisfactory than the strenuous life in a city. If he possesses great legal abilities it will not be long before they are recognized outside his immediate home, and he is summoned to positions of trust and honor.

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From John W. Daniel, United States Senator from Virginia.—The city is the place for a lawyer who seeks wealth as the great goal. Besides this, it offers many temptations and inducements to young members of the legal profession, for the reason that there are the " tools of his trade," large libraries, and there are the greatest opportunities. On the other hand, the small active town

in a good community, where slow and certain success awaits the man of character who is devoted to his profession, is the most inviting to the philosophic and sedate mind, which realizes that happiness is not to be found by the red-hot pursuit, such as that of hounds after a hare. Beyond these commonplace remarks the conflict between city, country, and village is almost as old as the hills and valleys, and each individual mind must decide as to location according to its own tastes, aptitudes, and object.

The best things that can be said about the legal profession with respect to those things that appeal to individual interest are:—(1) That to the man of unimpeachable character, good intelligence, aptitude, and devotion to duty it offers as sure a pathway to competence, good association, and reasonable success as can be found in any avocation; (2) that it is a philosophic, developing, and enlarging pursuit which constantly improves the mind and broadens the individual, both in intellectual scope and social dignity; (3) it has a public relation, and is at the gateway of worthy public service and promotion therein if desired.

Cæsar preferred to rule in a village rather than to serve in Rome. This shows that the temperament of the man should be considered in this location. One thing is sure—the man going into the legal profession must have a good stock of patience on hand, or else he will be quickly side-tracked and disappear from the conflict.

The legal profession is one above all others, no matter where it be exercised. "The race is not to the swift, nor the battle to the strong," but to him that endures to the end. Unless the young lawyer has made up his mind at its threshold to face the music, whether it be Yankee Doodle, or Dead March, to study under dim lights, to bear burdens, face storms, to labour to wait and not to flinch or cry, to scorn delights, to love helpful sacrifice, and to be a man indeed, he had better go to work in any other avocation than to follow the profession of law. It is boundless in its enquiry, in its opportunities, in its achievements, and in its honors; but it is boundless also in its exactions and in its appeal to the sturdy and heroic spirit. With the right qualities a young man can succeed whether in city, town, or country.

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From Jacob M. Dickinson, General Counsel, Illinois Central Railroad and President, American Bar Association.—My opinion, based upon personal observation of the careers of lawyers, covering more than 30 years, is that, generally, the opportunities for professional training afforded to the young lawyer in a city of moderate size, say from 30,000 to 100,000 inhabitants surpass those of our largest cities, for all-round development, and are better calculated to prepare men for high professional pursuits and the duties of useful citizenship. In the larger cities, unless one has exceptional advantages, he is likely to get a narrow experience, become a specialist and learn comparatively little of men. This will restrict his development to particular lines. His acquaintanceship will probably not be so large and general.

On the other hand a lawyer of equal ability, and of like personal characteristics, training, and habits, will probably in the same time in a city of moderate size have a greater variety of experiences at the bar. He will have the sole responsibility in all sorts of cases, in all kinds of course, and will acquire a wider and deeper knowledge of affairs. His self-reliance and character will generally be more rapidly developed. He will have a better understanding of Government, city, country, and state, and a wider acquaintance with officials and the conduct of their offices, and more intimate knowledge of judges, and a deeper experience with humanity. He will not be so expert in some things, but more adaptable for many things. It is from the body of lawyers so trained that have come mainly the men who have conducted the affairs of the nation, and those who have become the leaders of the bars of our great cities. Men of transcendent ability and genius are unfettered by conditions that shape the destinies of ordinary men.

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From Hampton L. Carson of the Philadelphia, Pa. Bar. Former Attorney-General of Pennsylvania.—If a young man can resist the temptations of the club and hotel bar rooms in small towns, and resolutely devote his evenings to a study of the law magazines and the reports, without ending up with whiskey and cards, I believe that he will obtain a better all-round knowledge of practice in the smaller towns,—he will draw deeds and pleadings with his own hand, he will try or watch the trial of all kinds of cases,

civil and criminal, and thus become experienced in all the varied cases which may demand his attention in after years; besides, he will have more abundant hours for the careful review of his law school work, and of examination of the reports of his own state; he can become acquainted with the entire bar and the bench of his country, and learn to know the citizens who are likely to be jurors, and study the leading business interests of his country, whether commercial, manufacturing, mining, or agricultural; he can get a grip upon the affairs of his community, and by industry, sobriety, and association, impress himself upon his fellow citizens much more speedily than in a city. Besides, if an opportunity come to him, and he make a striking speech to the jury, or argument before a Court, his talents will be more widely known to a larger circle than in a city, where he will be lost in the crowd.

He must content himself, however, with a more modest range of ambition in life, and not fret because the great prizes are beyond his reach. In time he may lead the bar of a large district, and be on the one side or the other of every litigated case, and close his days upon the bench, possibly the supreme bench.

If he be a man of really superior abilities—abilities which are so self-assertive as to burst the bonds of locality—he can, after making a start in his native town, transfer himself to a city. But unless he be a native of a city, with numerous friends and influential connections, possessed of the means of livelihood during his early years of struggle I would not recommend his starting in a city, where he would be doomed to disappointment because of the overcrowded ranks of the profession, and the fact that most well established firms and corporations already have their own counsel. If he seeks to connect himself with some well established firm of lawyers who need his services, he must be content to serve in a subordinate capacity for many years, and be looked upon rather as Mr. So and So's man, than his own.

I am speaking, of course of the average young man, and not of exceptional cases.

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From William Wirt Howe of the New Orleans L.A. Bar, and Former President of the American Bar Association.—There is something to say on both sides of the question. Some of our best

lawyers have become so in small towns, where they have had an opportunity to observe and even take part in the trial of a variety of cases, civil and criminal, and so prepare themselves for the difficult duties of an advocate.

But, on the whole, if a young man of good legal education and fair ability should ask my advice on the question, I would probably tell him to go to a large and growing city, and at first, if possible, enter a good law office where he would be brought at once in contact with important affairs, and find out how to apply his academic learning to such affairs. He would have to be very patient and do a good deal of waiting; but, on the other hand, there is a great demand in this world for men who can do things, and as soon as they are discovered the world is very glad to retain their services. There is sometimes delay in the discovery.

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From Roger Froster of the New York Bar.—If a young lawyer has ability of any kind, and his ambition is purely professional, unless he has influential connections in a small town, he has better opportunities in a city. The concentration in large firms and in the legal staffs of corporations—such as accident insurance companies, title companies, and railway companies—of so much legal work which in former times, was generally distributed among the profession, gives a young lawyer in the leading cities of United States now a better chance than ever before. The older men alone suffer from this new order of things. If a young man has ability in any special direction, for trials, writing briefs, negotiating settlements, preparing cases, or searching titles, he should soon have an opportunity to display it in a city. In the country he may have to wait for years before he can exercise it.—*The American Law School Review.*

REVIEWS.

Oliphants' Law of Horses: By C. E. Lloyd, B.A. Oxon, of the Inner Temple, *Bar-at-Law*. Published by Sweet and Maxwell, Limited, 3, Chancery Lane, London. Price 20 *s.*—This book has gone through six editions. The first was published so far back as 1847. In a country in which riding is an accomplishment which few men of the middle class are without and racing

is a pastime which has attractions for men of the highest position, the law relating to horses is a branch of legal study that must be largely pursued by the profession, especially that branch of it which relates to the warranty of soundness. There is, perhaps, no country in the world, civilized or uncivilized, in which horses are not the subjects of barter or sale. Though the law of horses is but a branch of the general law of the sale of moveable property, there are special features pertaining to that species of animal which requires special treatment. The case law has been brought down to the present day and the veterinary portion has been revised by a specialist, and Canadian notes added by a Canadian lawyer of special qualifications. We commend the book to the profession.

The Law of Arbitration in India: By Durga Charn Banerjee, B.A., Advocate, High Court, N. W. P. Price Rs. 10.—There can be no doubt this book supplies a want and Mr. Banerjee deserves to be congratulated on the care with which he has done his work. He does not pretend to an exhaustive treatment of even the Indian Law relating to arbitration, but he has collected information which will be found useful by the profession.

Diseases of Workmen: By T. Luson, M. D., and R. Hyde, M. R. C. S. Published by Butterworth & Co., Law publishers, 11 and 12, Bellyard, Temple Bar, London Price 4 *s*.—Cases under the Workmen's Compensation Acts are now becoming pretty numerous in England and there is hardly any part in the King's Bench which has not a case coming under the construction of the Acts. The present book deals with the diseases of workmen. A consideration of these diseases is important as the English Workmen's Compensation Act of 1906 which is a great advance in social legislation now gives relief as against employers to workmen incapacitated by what may be termed industrial diseases apart from accident. The book is, therefore, useful to those who have to deal with legislation of this kind and is interesting reading. We are not competent to judge whether the diseases have been accurately dealt with; but we think the authors state in a succinct compass most of the so-called industrial diseases and we are sure that the book will be useful to employers of labour and workmen, besides practitioners engaged in this branch of the law.

Insanity in India: By Major Ewens, M. D., Major, I. M. S. Superintendent, Punjab Lunatic Asylum, Lahore. Published by Thacker Spink & Co., Calcutta, price Rs. 7-8.—We welcome this book written by a medical man of large experience of Insanity in India. It must be largely helpful not only to medical men in the treatment of Insanity but also to men engaged in the legal profession in dealing with crime on the part of lunatics. The summary of cases of criminal lunatics extends over 40 pages and contains no less than 256 instances. There is no index and this is a serious defect in any book, which a busy practitioner has to handle. We trust it will be supplied in the next edition.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

Oliphant's Law of Horses By C. C. Lloyd, B.A., Oxon, of the Inner Temple, *Bar-at-Law*. Published by Sweet & Maxwell, Limited, 3, Chancery Lane, London Price 20 *s*.

The Law of Arbitration in India. By Durgacharan Banerjee, B.A., Advocate, High Court, N. W. P., Rs. 10.

Insanity in India: By Major Ewens, M.D., Major, I.M.S., Superintendent, Punjab Lunatic Asylum, Lahore. Published by Thacker, Spink and Co., Calcutta: Price Rs. 7-8-0.

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